(26,451)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 984.

R. A. FLANDERS, AS TRUSTEE OF M. C. COLEMAN, APPELLANT,

vs.

E. J. COLEMAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

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1 In the United States District Court, Eastern Division, Southern District of Georgia.

In Equity.

R. A. FLANDERS, as Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

To the Honorable the Judges of the United States District Court for the Southern District of Georgia:

Your Complainant, R. A. Flanders, as trustee in bankruptcy of M. C. Coleman, Bankrupt, brings this his bill of complaint and shows:

First.

That M. C. Coleman, filed voluntary bankruptcy proceedings in this honorable court on May 8th, 1915, on which date he was duly adjudicated bankrupt, within the intent and meaning of the laws of Congress relating to Bankruptcy.

Second.

On the fourth day of June A. D., 1915, your complainant was duly elected trustee of said bankrupt's estate, and his bond as such trustee was duly approved and filed on June 5th, A. D., 1915, and your complainant is now the duly qualified and acting trustee of said bankrupt's estate.

Third.

E. J. Coleman, is a citizen of the United States, residing in or near the town of Swainsboro, in the County of Emanuel, in the Eastern Division of the Southern District of Georgia.

Fourth.

That the jurisdiction of this court is invoked under the sections, 60*b*, 67*e* and 70*e*, of the laws of Congress as amended, relating to Bankruptcy, and the general equity powers of this court.

Fifth.

Your complainant shows that in about the year A. D., 1902, the said M. C. Coleman married, and that the said E. J. Coleman the

father of the said M. C. Coleman at or before that time, owned a tract of land hereinafter more fully described, containing
2 Three Hundred and Seventy-seven acres more or less, being in the 395th G. M. District of Emanuel County, Georgia, and the said E. J. Coleman placed his said son M. C. Coleman in possession of the said land, expressing his intention then and there to give the said land to his said son. That the said land was not cleared land at that time, and the said M. C. Coleman cleared the said land, moved on the same and lived on the said land exercising dominion of the same exclusively for at least twelve years, and placed on the said land valuable improvements, hereinafter more fully described.

Sixth.

That *on* or about the month of ——, 1913, the said M. C. Coleman bought a place known as the Rowan Durden place, and moved on the same. The said M. C. Coleman rented as landlord the said Three Hundred and seventy-seven acres of land which your Complainant charges had been given him by said E. J. Coleman to Dan Davis, Esq., for five years, the said rent notes for the same being taken in the name of said M. C. Coleman, and being payable as follows, $1000.00 payable October 1st, 1914, $1000.00, October 1st, 1915, $1000.00 payable October 1st, 1916, and $1000.00 payable October 1st, 1917, and $1000.00 payable October 1st, 1918. Your orator charges that the said M. C. Coleman collected the said note maturing October 1st, 1914, and that he, the said M. C. Coleman, on December 1st, 1914, and ever since that date to the filing of the petition in this cause was insolvent within the meaning and intent of the laws of Congress relating to bankruptcy.

Seventh.

Your orator further shows, that in the month of January or February A. D., 1915, the said M. C. Coleman, while insolvent within the meaning of the laws of Congress relating to bankruptcy turned over to the said E. J. Coleman, four of the said rent notes, of the value of Four Thousand Dollars, with intent to hinder, delay and defraud his creditors, there being no consideration for the said transfer, and if there was any such consideration, the same was largely less than the then value of the said rent notes.

Eighth.

3 Your complainant further shows that if the said conveyance of the said rent notes was not made with a purpose and intent to hinder, delay and defraud creditors, the said transfer and the effect of the same under the laws of Congress relating to bankruptcy was to create a preference in favor of the said E. J. Coleman, for that the said transfer was made while the said M. C. Coleman was insolvent, and the effect of the enforcement of the same will be

to enable the said E. J. Coleman to obtain a greater percentage of any indebtedness claimed to be owing to him by the said M. C. Coleman, than any other of such creditors of M. C. Coleman, of the same class. And at the time of the said transfer of the said rent notes, made within four months of the filing of the said bankruptcy petition, the bankrupt was insolvent and the said transfer operated as a preference, and the said E. J. Coleman at the time of receiving the said transfer of the said four rent notes, then had reasonable cause to believe that the enforcement of the said transfer would effect a preference, and the said transfer was void, and it is your petitioner's duty to recover the same or the proceeds thereof.

Ninth.

Your orator further shows, that the said M. C. Coleman, up to December 1st, 1914, had a good title to the said Three Hundred and seventy-seven acres of land, more or less, which is described as that certain tract of land known as the M. C. Coleman, place, bounded on the North by E. E. Coleman, East by F. M. and Geo. Stewart, South by N. L. Gillis, and West by John W. Gillis estate, and being in the 395th G. M. District of Emanuel County, Georgia. That although it does not appear that a deed had ever been delivered by the said E. J. Coleman to the said M. C. Coleman, for the said place, the said E. J. Coleman placed the said M. C. Coleman, in possession of the said land with intention to give the same to him, and the said M. C. Coleman held exclusive possession of the said land as his own, and made bona fide improvements on the said land of great value, and dealt with the said land as his own and as an asset of his own, for the purpose of obtaining credit, and from the said long possession so held, the said title to the said land became vested in the said M. C. Coleman, and at the time of the transfer of the said
4 rent notes to E. J. Coleman the legal title, or right to the said land was completely vested in the said M. C. Coleman as if he had obtained a deed from the said E. J. Coleman. That the said M. C. Coleman made the following valuable improvements on the said land during the time he occupied the same, as his own property, to-wit, clearing land for a ten horse farm, of about two hundred and twenty acres, reasonably worth $1,400.00..... $1,400.00
Four miles of wire fencing and putting up the same,.... $700.00
One six room dwelling, four stalls, barns, and cribbs, buggy house, cotton house, smoke house,..... $1,500.00
One two room frame house, brick chimney, one lot, crib, shelters and smoke house,..... $500.00
One four room frame house and kitchen, brick chimneys, 2 barns, stall, shelter, smoke house,..... $600.00
One four room frame house, kitchen brick chimney, smoke house, 2 barns, four stalls,..... $600.00
One four room frame house, brick chimneys, smoke house, barn and stalls,..... $500.00
One four room frame house, two brick chimneys, smoke house, barn, 2 stalls and shelter,..... $600.00

The said improvements being reasonably worth at the time of the making of the same, and having added a value to the said land of at least sixty four hundred dollars ($6,400.00).

That the said land and the improvements thereon are reasonably worth the sum of Twelve thousand dollars.

Your orator shows that the said E. J. Coleman claims that the said M. C. Coleman and his trustee in bankruptcy have no interest or claims in the said land and improvements. He claims that he has the right to hold and collect the said rent notes, and also to resist the right of your complainant to the said land and to the value of the improvements thereon.

Your orator shows that it is unjust and inequitable under any circumstances for the said E. J. Coleman to withhold the said land and improvements and the said rent notes from your petitioner as such trustee for said M. C. Coleman. That the said land and improvements are the property and assets of the said M. C. Coleman, and should be administered to pay his debts, and the said rent notes or the proceeds of the same should be recovered by your petitioner for the purpose of administering the same in this cause.

Tenth.

Your orator shows that the said M. C. Coleman's assets have (except as to the property herein sought to be recovered), been administered and the same have not realized more than $2900.00, and there are debts in existence of at least Sixteen thousand dollars or more, in the form of claims against said bankrupt's estate, and that unless the said property herein sought to be recovered is recovered, that the assets administered will not be sufficient to pay the said debts of said bankrupt, and it is necessary to recover the said land and notes and the value of such notes, for that purpose.

Eleventh.

Your orator further shows that the said M. C. Coleman, by arranging or agreeing with the said E. J. Coleman to relinquish his rights and title to the said real estate and improvements, in the year 1915, did so with intent to hinder delay and defraud his creditors, and that such conduct on the part of said M. C. Coleman in yielding to any claim of right to said land to said E. J. Coleman, was and is a fraud on the creditors of said M. C. Coleman, for the said M. C. Coleman well knew that he owned the said land, had the title thereto by virtue of the gift from his father E. J. Coleman, and the expenditure of large sums of improving the same, and in exclusively occupying the said land in his own right for nearly twelve years, and the said property should be recovered for your petitioner to administer the same as such trustee.

Twelfth.

That your petitioner charges that under the facts set forth the said E. J. Coleman was under obligation to convey to the said M. C

Coleman the paper title to the said land, in performance of his agreement to convey the same to the said M. C. Coleman, and that the said E. J. Coleman should be required to specifically perform the said agreement by conveying the paper title to the said land to your petitioner as such trustee, should this court determine that it is necessary for the said paper title to be vested in your petitioner.

6 Thirteenth.

Your complainant further shows that he is without any adequate remedy at law, and it is necessary to invoke the equitable jurisdiction of this Court in the premises to enforce your petitioner's rights in the administration of the said real estate and improvements and the said personalty or the proceeds of same.

Wherefore, your petitioner waiving discovery and answer under oath, brings this his bill of complaint and prays:

1. That the Court declare the said transfer of the said four rent notes of the value of $4000.00 and interest to be void, as having been made with intent to hinder, delay and defraud the creditors of the said M. C. Coleman.

2. That the Court further decree that the said transfer of the said rent notes to E. J. Coleman be declared to be a preference, should the court hold or find that there was any indebtedness owing to the said E. J. Coleman by the said M. C. Coleman at the time of the said transfer, and that the said notes collected by the said E. J. Coleman be accounted for, or their proceeds with interest from the date of collection of same be recovered by your complainant, and that any of said notes that may not have been collected up to the time of final decree be decreed to be surrendered to your complainant, as an asset of said bankrupt's estate.

3. Your complainant further prays that the said Three Hundred and seventy-seven acres more or less, described in this bill of complaint be decreed by this court to be the property of your petitioner as such Trustee for the purposes of applying the same towards the payment of the creditors of said bankrupt's estate. And that the defendant, E. J. Coleman, be forever enjoined from claiming any rights in the same or asserting any claim of title to the same, and that he be required to make such conveyances or acquittances so that your petitioner as such trustee may have and hold the paper title of the said property for the purposes of said bankrupt's estate, and in order that the same may be sold by your petitioner as trustee and a good title to the same be conveyed.

7 4. That in the event this court should hold that the complainant should not have and receive the relief prayed for in the preceding paragraph, because of any defect in complainant's claim of title, that your complainant be declared as such trustee to have an equitable lien or charge on the said land, at least to the extent of the value of the said improvements thereon, and to the extent that the said M. C. Coleman has improved the said property, to-wit: at least $6800.00.

5. That the said respondent E. J. Coleman be required to specifically perform his promise and agreement based on meritorious consideration to give the paper title to the said land to the said M. C. Coleman, and that the said paper title be made in your petitioner's name as trustee, for the said M. C. Coleman for the benefit of the said creditors in bankruptcy of the said M. C. Coleman.

6. That your complainant have such other and further relief as to this court may seem meet and proper in the premises, and that all of the said conveyances, transfers and releases made by the said M. C. Coleman to the said E. J. Coleman be set aside.

7. That process of subpœna may issue directed to the said E. J. Coleman, requiring him to plead to this bill of complaint in terms of the law and in accordance with the rules of this Court in equity.

And your Complainant will ever pray, etc.,

SAUSSY & SAUSSY,
Counsel for Complainant, R. A. Flanders, Trustee.

Endorsement: Original Bill of Complaint. Filed in office Sep. 20, 1916. J. C. Morcock, Deputy Clerk.

8 In the United States District Court, Southern District of Georgia, Eastern Division.

In Equity.

R. A. FLANDERS, Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

To the Honorable the Judges of said District Court:

The Complainant now comes and amends the eleventh paragraph of the said bill, and by adding at the end thereon, the following allegation:

That within the period of four months immediately preceding the filing of said bankruptcy proceedings by the said M. C. Coleman, to-wit: on or about January —, 1915, while insolvent, and with intent to hinder, delay and defraud his creditors, the said M. C. Coleman, who then held the title to the above described real estate, fraudulently disclaimed such title, and surrendered the possession and control of the said property and his title thereto, to the said E. J. Coleman, and thereby fraudulently transferred his rights, title, interest and equity in the said real estate to the said E. J. Coleman, contrary to the laws of Congress in such cases made and provided, and transferred said rent notes with the purpose and intent to make the tenant his tenant the tenant of said respondent and said tenant has attorned to said respondent.

WILLIAMS & BRADLEY,
SAUSSY & SAUSSY,
Counsel for Complainant.

Amendment allowed.
In open Court, December 9th, 1916.
W. W. LAMBDIN,
U. S. District Judge.

Endorsement: Amendment to Bill of Complaint. Filed December 9, 1916. J. C. Morcock, Deputy Clerk.

9 In the United States District Court, Eastern Division, Southern District of Georgia.

R. A. FLANDERS, Trustee for M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

Ejectment.

Answer of Defendant.

And now comes the defendant, E. J. Coleman, and makes answer to said bill as follows:

1.

Paragraph first of plaintiffs' petition is admitted.

2.

Paragraph second of plaintiffs' petition is admitted.

3.

Paragraph third of plaintiffs' petition is admitted.

4.

In answer to paragraph fourth of plaintiffs' petition, as to the jurisdiction of this court, this defendant denies the same. And, while a motion to dismiss has, by this court been overruled, still, respondent alleges that the facts as they appear, show that he has done no act, which places him under the law as set out in said paragraph, and that the only court with jurisdiction to try any issue relative to this question of gift or no gift of the property in question, is the Superior Court of his residence, Emanuel County, Georgia. Respondent would further say, that he cannot, only as above, deny or admit said paragraph, for want of sufficient information, and strict proof of the same is hereby demanded.

5.

Paragraph fifth of Plaintiffs' petition is denied; except that on or about the date mentioned therein, his son M. C. Coleman married

and that your respondent owned and now owns and has never parted with either directly or indirectly or otherwise, the title to the land in question, or to the full perfect complete ownership and dominion over the same as in fee simple since the day he purchased it.

10 Further answering said paragraph, this respondent would show that while possibly all of said land was in the wood, and was by the said M. C. Coleman, his son, cleared and improvements made thereon. This respondent would show that this was all under his supervision, exercising dominion over said land, recognized by his son, that in the use and enjoyment of said loan said improvements were necessary as well as the fact that it improved his property and made it more valuable.

6.

Respondent finds it impossible to answer paragraph sixth as a whole, either with denial or admission, nor can he either deny or admit, because it sets up different allegations; some of this defendant knows, and some he does not know. So in answer thereto, this respondent says that the allegations therein that in some month in 1913, M. C. Coleman moved on what is known as the Rowan Place is admitted, but as to his purchase of the same, respondent does not know, but for the purpose of this answer and this case, he will admit the same.

Your respondent further answering said paragraph sixth would say: That whether in renting said place to the said Dan Davis, the said M. C. Coleman, his son represented himself as landlord or not he will neither deny nor admit for want of sufficient information: That as to whether or not the said M. C. Coleman collected in October, 1914, the note for $1,000.00 your respondent has been so informed, therefore admits same. As to other notes, this respondent would say: that his son without any request from him, without a word having been said prior thereto in reference to the place, sent the four notes to him, when this respondent was not advised about his son's conditions. Your respondent received said notes believing them to be his, providing he ratified the said trade, which he knew he need not do unless he wished, but the said rental was a fair rental, and even if he had not been, he thought and believed that Davis acted in good faith and he would not out of respect for his son, have put Davis off.

The remainder of said paragraph is neither denied nor admitted for want of sufficient information, and if proof of same is

11 necessary strict proof is demanded.

Further answering, this respondent would say that if at any time said M. C. Coleman was insolvent, your respondent had no knowledge of the same directly or indirectly, said M. C. Coleman never talked to him in reference to his financial condition, or in reference to any bankruptcy, and he did not know of the same until it was done.

Your respondent further answering, would say: That in all this entire transaction he acted in perfect good faith, that the notes came to him as his, the land was his, there was no benefit of any kind

reserved to his son, and there was nothing done by him to change the status of the affair one way or the other, but that he acted in accordance with what was right, as he saw it, and as the property belonged to him.

7.

Paragraph seventh of plaintiffs' petition is denied, except as to the receiving of said rent notes, which has been partially, if not fully, explained in the sixth paragraph of this answer, which he hereby re-affirms.

8.

Paragraph eighth of plaintiffs' petition is denied.

9.

Paragraph ninth of plaintiffs' petition is denied. Further answering your respondent would show that some improvements were made on the land so that M. C. Coleman would enjoy the loan of said land, but said improvements were made at scarcely no cost to the said M. C. Coleman, but from the product of said land, together with what was advanced to the said M. C. Coleman by this defendant.

10.

Paragraph tenth of Plaintiffs' petition is neither denied nor admitted for want of sufficient information. If proof thereof be necessary, defendant demands strict proof.

11.

Paragraph eleventh of plaintiffs' petition is denied, except
12 as to the insolvency of the said M. C. Coleman, which is neither denied nor admitted for want of sufficient information. It is a matter which this respondent knew nothing in the world about. This respondent, however, admits that he collected the rent notes as they fell due, and he contends that under the law and the facts in this case he had a right to do so, because said land was his, therefore, said rent notes were his.

12.

Paragraph twelfth of plaintiffs' petition is denied.

13.

Paragraph thirteenth of plaintiffs' petition, being in the nature of a prayer, is neither denied nor admitted for want of sufficient information. But this respondent does deny the right of said petitioner to receive an affirmative answer to said prayer.

14.

Your respondent having answered said bill or petition by paragraphs, by way of further answering said petition, this defendant avers; alleges, charges, and will maintain and prove as true, that the title to all the property in said petition described is his, and has always been his since the date he purchased it, which was several years ago.

15.

Your respondent would further show that his son, M. C. Coleman, has never had any title to said property directly or indirectly, that the same has never been given to him at any time, nor were the improvements put thereon in consideration of any gift, nor has there anything been done by him, by which title could either in law or in equity pass out, or be decreed out of this respondent and into the son, under or by any of the rules of law governing a transaction of this kind. That this transaction was simply a loan of this real estate to his son, for his use in making a living thereon, and that this respondent has always exercised dominion over same, known to his son, M. C. Coleman, and that he has always acknowledged the title to this property, both the paper title and the real ownership, both in law and equity, in this respondent, and has never at any time, as far as this respondent knows and is advised and be-
13 lieves, set up any claim of right or title thereto, except a claim of loan under which he went into possession.

16.

Your respondent would show that it was his intention as each of his children became of age, or married, to put them in possession of land, not as a gift, or with any intention to give, that he did that in this case, for this son, M. C. Coleman, who knew this and has at all times recognized the title in respondent, and has never had any further or greater title than a loan; that he has never claimed any right, and in all dealings with said property, he has recognized the right and title and ownership in this respondent, not only the paper title, but the real title, both in law and equity, and fee simple.

17.

Respondent would further show that to have given this land to his son, M. C. Coleman, would have been a pleasure to him, that he so told him at the time he allowed him to go upon said land; that he also told M. C. Coleman his son, that he could not give same to him, and do the same by all his children, and that he expected to treat them all alike.

18.

Your respondent would further show that any improvements made on said land, were not made on the strength of any gift or any

intention of giving, all of which was well known to his son, M. C. Coleman, but said improvements were made so that his son could enjoy the loan, and use of said land, as without said improvements, the loan would not do his son any good.

19.

Respondent would further show that while said improvements were being made he advanced said M. C. Coleman different sums of money, and made no charge of same, and no demand for same. This respondent believed that a large portion of said money went towards paying for the improvements on the land in question, and increased the value thereof, to the interest of those, share and share alike, who would eventually receive his estate.

14 20.

Respondent would further show that the occupancy of said loan by his son originated in and continued to be a loan pure and simple. Respondent has at all times claimed and had dominion over the same, recognized by his son, and that his son has at all times disclaimed any right, title, or interest therein. Respondent paying the taxes thereon ever since he purchased same, giving said land in his own name, and with his other property, swearing to the return as the law provided.

Respondent having fully answered, prays to be discharged with his reasonable cost.

E. J. COLEMAN,
Respondent.

Postoffice address Attys., Swainsboro, Ga.

F. H. SAFFOLD,
ARTHUR JORDAN,
Attorneys for Respondent E. J. Coleman.

15 In the United States District Court, Eastern Division, Southern District of Georgia.

In Equity.

R. A. FLANDERS, Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

GEORGIA,
Emanuel County:

Personally appeared E. J. Coleman, the defendant in the above stated case, and makes oath that the statements in the foregoing

answer made so far as they come within his own knowledge, are true, and so far as his information goes, he believes them to be true.

E. J. COLEMAN.

Sworn to and subscribed before me this the 20th day of December, 1916.

MOLLY WARNOCK,
Com. N. P. E. Co., Ga.

Endorsement: Answer. Filed in office this December 22, 1916. J. C. Morcock, Deputy Clerk.

16 In the United States District Court, Southern District of Georgia, Eastern Division.

In Equity.

R. A. FLANDERS, Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

Condensed Statement of the Evidence for the Purposes of Appeal.

The following evidence and testimony was taken before Hon. George W. Owens, Special Master commencing on the 11th day of May, 1917.

The Complainant offered in evidence the following documentary evidence:

The Schedules of the Bankrupt under one cover, which shows that the bankrupt, M. C. Coleman, filed a voluntary petition for adjudication in Bankruptcy in the United States District Court Southern District of Georgia, on the 8th day of May, A. D. 1915, at 11 o'clock A. M. That these schedules show $16,003.08 of unsecured indebtedness owing by him to various creditors, some of them residing in Georgia, and other States of the United States, $995.00 of discounted bills which others were liable for, $1,837.01 accommodation paper, and $237.27 taxes and wage claims, and the schedules of assets listed property valued by the bankrupt at $6,871.33. The schedules show the bankrupt asked for a homestead in money of $1,600.00. E. J. Coleman is listed as one of the unsecured creditors, amount stated $2,100.00 year contracted, 1914.

The adjudication of M. C. Coleman, as a bankrupt dated May 8th, 1915.

All claims proven against M. C. Coleman bankrupt, were offered in evidence, showing aggregate of unsecured claims proven $12,000.-00 by many creditors residing in Georgia and other States of the United States.

17 JOHN E. YOUMANS, witness for the complainant testified as follows:

I am a creditor of the bankrupt, as security on a note. I endorsed his note. At the time I endorsed his note, M. C. Coleman, I think, was in possession of the land in dispute. The note was renewed two or three times. It was finally, $900.00 or $1000.00. The note was due to the Citizens Bank of Swainsboro. It is signed by me, the bankrupt M. C. Coleman, and J. L. Warren. That debt has not been paid. I paid half the note last fall, right after he went into receiver's hands. We have paid the balance. We paid $614.00 then and we have paid the balance. I cannot state positively when the first note was given, been five or six years ago, maybe longer; it has been running along.

This particular tract of land, was called among the people generally, the Stewart Place, according to my understanding. After M. C. Coleman went there, it became known as the M. C. Coleman place, he was on it. I cannot say definitely how long M. C. Coleman was in possession of this tract of land, but between 12 and 15 years he has been over there. When he first entered in possession of it, there was no improvements much there. I cannot say, what improvements, in a general way, that is, what amount of the land is now actually in cultivation compared with what was in cultivation when he went there. There was not very much in cultivation when he went there, but a big lot of it now in cultivation. I suppose 225 or 250 acres now in cultivation. There was a small amount in cultivation when he went there. I do not know the exact amount. I would think the value of this place as it now stands is thirty dollars per acre. It is an average land for that county, it is an average place. It is a pretty good piece of land, it is an average or above the average. It has a good wire fence on it; may be some little rail fence, but most of it wire fencing. Six settlements. I lived in about five miles of that place. I have been seeing the place for a long time. When M. C. Coleman entered into possession of that land in 1902 or 1903, it was worth five dollars per acre, or upwards. The outside price would be from five to ten dollars per acre. As the land now stands it is worth $30.00 per acre.

18 Q. What was the value of that tract of land on or about January 1915 which is the time when it has been testified the land was surrendered to the respondent, E. J. Coleman? Is there any difference between its value now and then?

A. I don't think so. It is worth Thirty dollars per acre at that time, which includes the improvements as it now stands. I have recently been over that tract of land to survey and value the improvements made on it. I only ran up the values roughly. I made four thousand one hundred dollars including wire fencing and buildings. I left off clearing of the land and putting it in cultivation. It costs about $3.00 per acre to take in land, clearing that way. I have had some experience in handling plantations and building up lands from wild lands into cultivated farms.

Q. To any extent?

A. Yes, right smart. I built up two or three places. My farm is about five miles from this place. And from my experience and knowledge of the cost and prices, in building up my place, and having built farm houses and had them built on my place. I went to the lower end of the plantation the other day, on this place in dispute the first house, rough estimate five rooms and improvements, I put at $500.00. I wanted to make it reasonable. Next is the wire fencing, the schedule here makes at least five miles of it. I put up five or six miles of wire myself, and it cost me $100.00 per mile. I put that wire fencing at $500.00 and then put up the posts and the wire and allowed him $100.00, making $600.00 for that. That is the way I valued that. The next place, house No. 2, Sidney Gun, and improvements. That small improvements $300.00 I am confident it cost that much. The next house, Number three, The Cox house and improvements, I put at $600.00. That is the one they told me Math built for his own use and lived in himself. I put that $600.00. The next one, the Alfred Brown house, four rooms and improvements, $600.00, and that was next one, the next was Fred Boom house, no Alfred Boom house. No. 5, and improvements, $300.00. That is another small place. Now No. 6 the last house is Dan Davis's house, six rooms and improvements and the improvements are good, good stable and barn, good house, and with the improvements, I put it at $1500.00 I think it is a low
19 estimate for the work that has been done. I did not estimate on the taking in the land and clearing it. I paid $2.00 per acre to get the logs and everything cleared, it cost me $1.25 to get it turned over, so a reasonable estimate is $3.00 per acre for clearing it up, the way it cost me.

I would say the value of these buildings and the cost of erecting them would have been them same in January, 1915, that they are at the present time, all these improvements.

At the time I signed this original note or any renewal thereof, he, M. C. Coleman came in the front office there one day with this note and asked me to sign it. Mr. Warren had done signed it, and he told me he needed some money for improving the place over the Ohoopee, and asked me if I would sign it with him. I told him——

Q. His place, what place did he refer to?

A. This place over there; that is all the place he had taken up over there, and lived there at that time. I am under the impression at that he was there, I am not positive, but that is what he told me, needed some money and would like to get some to do some improvements he was making over there on his place.

Q. Did he say what improvements he wanted to make?

A. Improve his place. He did not say what kind of improvements he was putting up, whether taking in land or building houses or what; he did not go on that far and say. I signed that note right then. Of course I signed the note on the faith of the statement made to me, I thought the place was his'n.

Cross-examination:

Those improvements were necessary to have improved it, before he could derive any benefit, to get it under good cultivation, to produce something. The improvements were necessary in order that the man in possession of it might receive some benefit from it in some way; couldn't get anything in the shape it was in. I cannot state the date of the first note, it has been running several years. We renewed it three or four times. I am not certain, when the year would run out, he would come back and renew it. At the time I signed these renewal notes, some three or four times I
20 spoke of, the bankrupt, M. C. Coleman was on the same tract of land all this time.

The Citizens Bank of Swainsboro, according to the original proof of claim submitted to me, has proven claim against bankrupt, M. C. Coleman on two executions one of them against M. C. Coleman, witness and J. L. Warren, for $952.22 principal. That is the debt I have reference to in all my testimony, that is the note I am involved in.

L. W. YOUMANS, witness for the complainant testified:

I am a creditor of M. C. Coleman, bankrupt. He borrowed some money from the bank to improve—I am security on his note, accommodation endorser. The note is signed by me and T. F. Lewis. I am a brother of J. E. Youmans just on the stand. M. C. Coleman came to me and I signed it and he said he was going to Mr. Lewis and I was informed afterwards he signed it. This is the renewal note (Note handed witness). The Citizens Bank of Swainsboro has proven against Bankrupt M. C. Coleman on an execution against M. C. Coleman, witness and T. F. Lewis for the sum of $636.50. I suppose that is the note and debt I have reference to. The cost and all was nearly $900.00. The original note was given 10, 11 or 12 years ago.

The Bankrupt M. C. Coleman, informed me that he was in possession of this tract of land which is sued for, at the time I signed that original note with him. He got the money to improve that place over there, the place now being sued for. I signed the note on the strength of his statement, that statement. In that conversation with reference to whose place it was, he said it was his place.

I signed the note on the strength of that statement that it belonged to him.

Q. Now, at the time you renewed this note from time to time, and up to the time you signed the last renewal, which is now sued and in judgment I believe, was Mr. Coleman, the bankrupt still in possession of that same tract of land?

A. He said he was, and said he had done all he could to get his land fixed where he could make a living.
21 I and my co-surety on the note have been called upon to pay any part of this debt. I have not been over to the place recently to make any examination of it as to improvements. I did

not know of any other assets that the bankrupt had at the time he got me to sign this original note, other than this place, except his personal property, live stock and so on. That he was using on the place. I did not know how much live stock he had on the place at the time the note was signed.

BARTOW MOORE, witness for the complainant testified:

I am a creditor of the bankrupt, M. C. Coleman, he came and got me to sign a note with him to borrow, I did it just to accommodate him to aid him, help him get money, no consideration actually passed to me. I don't remember just when it was signed, I know I paid it, but don't remember when I signed it. That note is to the Bank of Norristown, it has been within the last two or three years, something of that sort. At the time he procured my signature to the note, he, M. C. Coleman told me he wanted to borrow money to haul some timber, he didn't want to sell right then, wanted to keep the timber a little while longer. He was ta-king about the place he had over the Ohoopee.

Q. The place over the Ohoopee is this place you speak of, that is in dispute?

A. That is the way he spoke of it, as "my place," all right. He was in possession. The Bankrupt in possession of the tract of land at the time I signed this note. I do not know exactly who was living on it. I don't remember whether Dan Davis had moved over there then or not.

I have been over that tract of land recently, I went with Judge Youmans the other day. I do not know hardly what that tract of land would be worth as it now stands. I do not know that I could tell just exactly what the value of the improvements, the cost of erecting the improvements now on the place is; looks to me like worth something like four or five thousand dollars.

I was with Judge Youmans when we all together made the calculation that he took down on a memorandum. J. W. Smith
22 and Dan Davis were with me at the time Judge Youmans made that list. We all agreed to the different valuations noted at that time. I think somewhere about 280 acres in cultivation.

M. B. GILLIS, testified for complainant:

I am a creditor of M. C. Coleman, the bankrupt. Became a creditor by endorsing his note. That is the note which the Bank of Norristown now has. They are two notes dated December 18th, 1914, I think so. That was a renewal of another note, I do not remember exactly the time. I endorsed for him and that he was about to be sued on the note and came around and got me to endorse a new note, you know. Not very long after the original note was given, he got me to endorse the second one. I do not remember exactly but wasn't but a few days, about a month, I think, maybe, just a short time, and the note came due and they were after him. I don't remember exactly how long it was. All of this was before

M. C. Coleman went into bankruptcy. At the time when I signed the renewal, and the original note to the Bank of Norristown, M. C. Coleman the bankrupt I believe was in possession of this tract of land across the Ohoopee that we are suing for.

Q. Well, he or his tenant?

A. Well, Mr. Davis had it in charge. I am unable to say how long he lived on that land himself, three or four years. I suppose he and his family been off from there two or three years. Mr. Davis was on the place, Daniel Davis. He was in possession of the place at the time I signed the note farming it as tenant.

Q. Mr. Gillis, what statement did the bankrupt make to you at the time he procured your signature to that original note or the renewal thereof?

A. He first told me he was going to pay this note with his rent money. It was but a few days before it was due. I do not know that it was the first of October 1915, but when this note became due, that he was going to pay it with his rent money, and he got his rent money that same day. He was talking about the rent of his place, this place, he gave me a draft on some man in Savannah to take up one note but it was turned down and wasn't paid, then they were going to sue it, and he wanted to come round, and wanted
23 me to sign a new note for him; said he would carry it over if I would sign a new note. I asked him to go to his father. He said that was something he never had done and never would do, and finally told me, "If you will do this, if you will sign theses notes for me I will go back by my store and commissary over there at the spring, and says "I will get this, meaning his rent note," and I will give it to you—attach it to the—turn it over to Mr. McCrary, he was cashier of the Norristown Bank, Bank of Norristown. He was talking about that—let me see, that was the note for 1914, I reckon. It was the note given by Dan Davis. The amount of the rent note was one thousand dollars. I do not know that he mentioned the amount of the note, but he says I "will put up this year's rent note." I heard he was getting $1000.00 rent for this place. I don't know if he ever told me what he was getting. He mentioned to me that he would pay this note with his rent note; that was the first time, and the next time, when he got the renewal, he was going to put up that year's note as security, with me. It was the rent note for the year in which I signed the note.

Q. The rent note for what place?

A. Talking about the place where Dan Davis lived. And that is the place we are suing for now. I then signed the note and I signed it on the strength of this assurance. The bankrupt did not put up this rent note, for the year in which the note was given. The renewal note is the one proven here, dated December 18th, 1914, due September 1, 1915. It was the rent note for 1915 that he was going to put up. The renewal note was the one which he was going to put up. He told me he was going to pay the first note with that year's rent, but he did not do it, and when they were threatening, going to sue it, he said he would put up the next year's rent note. I

was called on subsequently by the Bank of Norristown to pay this note. I paid it. The fi. fa. is $560.00 with interest and costs.

J. W. SMITH, witness for complainant testified:

I am Vice-President of the Bank of Norristown. I have been through this tract of land in dispute a few times. Pretty much in a general way practically all my life I have known it. M. C.
24 Coleman, the bankrupt got in debt there a whole lot, the Bank of Norristown extended credit to him.

Q. At the time you extended credit, was M. C. Coleman in possession either in person or by tenant of this tract of land we are suing for now?

A. Why at that time I thought he owned that land, that it was his property. He was in possession of it, either personally or through tenant, I think he was. The year that it was that I extended the credit to him, it might probably have been the latter part of '13 or '14, I think it was, the best I can remember.

I do not know who was living on there right at that time. Dan Davis, I am pretty sure he was there. M. C. Coleman did not make any statement to me, or in my presence to any official of the bank in reference to this particular property when he obtained credit from the bank, not to me, he did not. Not in my presence. I was over this tract of land a few days ago, with Dan Davis, J. E. Youmans and Bartow Moore. As this tract of land now stands, I think it is worth $30.00 per acre. I think it is an average place, the character of the improvements and the condition of the improvements for farm purposes are pretty good. I think the value would be the same in January, 1915, or thereabout. Worth the same then as now. I am not experienced in building, I have never done any of it, just an estimation I should think the buildings and fences is worth right around four thousand dollars.

I cannot tell the cost of clearing the land and preparing it for cultivation. I cannot tell the value of the land in 1902, 1903, and I do not recall when M. C. Coleman first went over there and cleared that place up.

T. H. Cox, witness for complainant testified:

I suppose I do know this tract of land that is in dispute, that the trustee is bringing suit for. It is now about three miles from where I live. I have been living right around there for the last fifteen or sixteen years. I knew that place prior to the time M. C. Coleman entered into possession of it, I was the second man to live in the house, the first house that was built on the place. The timber
25 had been cut off when M. C. Coleman entered into possession, by a Mr. Rentz, I suppose Rentz cut it for saw mill purposes. I cannot tell you that it was after the timber had been cut off that Coleman took possession. I do know how the timber had been cut when I went there. The timber was cut before I went there. I do not know what year it was that M. C. Coleman went into possession.

He was in possession when I went there. I went there in 1903. When I went there, why only one house was on the place. I moved into it. Wasn't any acres in cultivation, men clearing it up, when I went there. Just a little broke up the summer when I went there and I tended it that Fall. About eighteen acres I suppose. The house was a new house, it is on the place there now. I helped to put up one or two buildings. I built the house next where he lived. It was a new house. The negro house between where I lived and Mr. L— lived.

Q. Now, Mr. Cox, who did you erect those buildings for?

A. I traded with Math Coleman, M. C. Coleman. M. C. Coleman paid me for the work. I cleared the land. M. C. Coleman paid me for it. I put up fencing and he paid me, he paid me for everything I done there. I worked the place and lived there for a period of time. I worked it two years share farming and then on rental. I share, farmed and accounted to for the other portion of the crop with, Math, M. C. Coleman. I rented it from him. I paid him the rent myself.

Q. Now what years were they?

A. I went there in 1903, 4, 5 and 6, 7 and 1908. 1909 I moved away from it, the ninth year. I cannot tell you how many acres were in cultivation when I moved away from it, I never did get down and measure off the acres. I tended the last year I stayed there a four horse farm. Now, there was one farm that was over the lane there belonged to his father. He said that was his father's. One farm was over there; left me with the three horse farm on his place. I tended the three horse farm on his place. The tract of land adjoining that was called his father's place. The place that I built up was known as Math's place.

Q. Did any one ever point out the lines of that place to you, Mr. Cox?

A. Yes sir. Mr. Math. When I was clearing he showed me where the line would be, the line between me and his Pa. I don't know that he ever said whether the land was given to him or not. He said it was His'n. When he pointed out the line to me, he went down to the branch and showed where the line and the branch came together. He says come up to the Branch and go right
26 straight across to the corner of Mr. John W. Gillis—I do not know that he ever told me where he got the land from. I had it down his Pa gave it to him. I did not know but he might have bought it and paid for it. I do not know that I ever asked him. M. C. Coleman never did live on it. He lived on his Pa's place, on the other side, in an old house, the first two years that I went there.

Q. After you left there, who moved on this place?

A. Math Coleman. I could, when it was run up, tell what the lines were that M. C. Coleman pointed out to me as being the lines of this place. I followed the chain carried one end of the chain. F. C. Gillis handled it. Math had the lines run out I reckon, him and his Pa was both along there. Best I remember now, I think his father was there. I am not sure, but I think he was there part of the time, but don't know whether he was there all day or not. I know

this place as it now stands. There is another 50 acre tract of land there I believe, that is in cultivation and used in connection with that plantation. That is the place I call the Stewart place. That is a separate place. There was some little buildings on it when I was there. None now, I do not think. I think they were all moved away. I gave a rent note for the rent of the land. I think all have been destroyed I have not got any. I made a search for them.

Q. Did you make diligent search?

A. I found the last settlement between me and Mr. Math Coleman. We had an arbitration and found the settlement that was made between us. I never bought it. I could not find the rent notes. I think they have been destroyed, I think I burned them up. The first year I got the place at $250.00, the last year $310. for it. The notes were payable to Math Coleman, and I paid them to him.

Cross-examination:

I do not know when M. C. Coleman went into possession of this property. He was in possession when I went there. He was living then there, he lived on his father's place. I do not think he ever lived on this place.

DAN DAVIS, witness for complainant testified:

I am now residing on this tract of land the complainant is suing for. The first year I started living there, I made a crop there, 1914.

27 Q. From whom did you obtain possession of those premises.

A. I leased from Math Coleman. M. C. Coleman for five years. I gave him five rent notes, for the amount of $1000.00 for each year.

Q. Will you please say if there are two of these notes; one dated Dec. 11th, 1913, calling for the payment to M. C. Coleman landlord or agent of $1000.00 on the first day of October, 1915; Is that one of them?

A. Yes sir, that is one of them. Another note bearing same date calling for the payment of $1000.00 on October 1st, 1916, to M. C. Coleman, landlord or bearer same date. There is one note between them. That is another one of the notes. There were five of these notes, covering the years, 1914, 1915, 1916, 1917, 1918. The note maturing in 1915, which was submitted the witness, is herewith copied, material parts being included, all of the same notes are of like tenor and effect except only as to date of maturity.

Georgia, Emanuel County.

$1000.00. Swainsboro, December 11th, 1913.

On October the first, 1915 next, I promise to pay to the order of M. C. Coleman, Landlord or Bearer, One Thousand Dollars for rent of ten horse farm, the present year on part of the Anthony Phillips Place, adjoining (here is described the place, which is bounded

North by lands of E. J. Coleman, East lands of Stewart, South by lands of Phillips and E. J. Coleman, and West by lands estate of N. L. Gillis, John W. Gillis. Containing agreement that landlord liens dates from date of note, with power of distraint to the transferee, power to assign the lien, agreement to pay ten per cent attorney's fees in event placed in hands of Attorney for collection, and waiver for self and family of homestead rights. If not paid at maturity interest at rate of 8 per cent per annum. Witnessed by two witnesses one of whom was Clerk of the Superior Court, Emanuel County, Ga.

My period of rental has one year beyond the present year yet to run, I have got one year more. I am working that place and cultivating it, as tenant under the original contract of rental now. I paid the two notes payable in 1915 and 1916. I paid the 1915 note and the 1916 note Two thousand dollars to Mr. E. J. Coleman. The respondent in this case. The rent for the year 1914 I paid to M. C. Coleman. He surrendered that note when I paid it. The contract I made when I went into possession of that place, I leased it from Mr. Math Coleman. He taken me around and showed me and
28 told me what he had there, and he told me that there was a ten horse farm. We went around that place and I leased it. I gave him one thousand dollars per year for five years. I had no dealings directly or indirectly with anyone else in that contract of rental, other than with M. C. Coleman. I dealt with him as landlord. I did not know anyone else in the deal. Just guessing, I think about 260 acres are in cultivation in the whole thing. That includes the cultivated lands on what we call the Stewart tract, that is fifty acres, the Stewart land that M. C. Coleman had deed to and which the trustee of the bankrupt sold. I do not think there is over 260 acres of cleared land on it all.

Q. Now deducting from this total of 260 acres the number of acres on the Stewart tract, how many acres would there be left on the other tract which is in controversy?

A. I do not think over 35 acres, something like that, on the Stewart tract, and that would leave the rest of it with 260 acres on that, which would be about 255 acres or something like that. Looking at plat, hereinafter referred to, the witness — this lot, indicating, would be the Dunlop place; that is cut out. I take that to be the Dunlop place. The Stewart place is — shown it is back in this bend, (indicating). That is sort of on the South. The Dunlop place is north, it is about one side across that. That bend cuts round. Now Gabe Phillips' place comes right in here (indicating), comes down the line, that Stewart place and this bend here (indicating) is where the 50 acres comes in.

The witness indicates on the map the boundaries as given in the rent notes, which describes the tract. The descriptions in the rent note and in the plat correspond.

Q. Mr. Davis, Mr. Coleman, T. H. Coleman seems to have farmed and cultivated this place up to and including the year 1908. You say you went there in 1914?

A. Yes sir. I do not know who cultivated the place or was in possession of it from 1908 to 1914. I went over there in 1910, if I am not mistaken. I hired Mr. Fred Flanders in the summer to ride turpentine woods for him and to my recollection there was an old gentleman by the name of Wilson living on the place the
29 year that I went there. This man was cultivating the place during that time, according to hearsay, heard it was for M. C. Coleman. All I know is what I heard, Math Coleman. Before I went on the place, Math Coleman lived over there on—beyond Norristown, on what is called the Rowan Durden place. That is off in another settlement. I do not know where he lived before he moved to the Rowan Durden place. He was not on this tract, my recollection is I went there in October, 1910. I heard that Mr. Rentz cut the timber off that tract. $1000.00 per year is mighty big rental value for that place. I am paying of it. I suppose the fair market value of that place as it stands now, it ought to bring $30.00 or $35.00 per acre. It is a fine place. It is rated a good place. It produces well. The reasonable rental of the place about January, 1915, was about the same. In 1904 or 1905 after the timber had been cut off this place the value of the tract of land at that time woodland, I judge to be worth something like $10.00 per acre.

I do not know the cost of erecting the improvements on this place. I never had any experience in that, I do not know, but it is worth a right smart. I went over the place with Judge Youmans, Bartow Moore and J. W. Smith. They came to my house and asked me to go and show them the buildings and I went. I was present when the estimate of value was placed on all the improvements.

Q. Judge Youmans took a memorandum of them at that time, did you take a memorandum also Mr. Davis?

A. Just in my head, I think I called it over. The first house is what I call the Love house, my recollection is it was all settled, that place, buildings, dwelling house, lot and farm houses, I think $400.00. The next house was what I call the Sidney Gunn house, a negro lived in it by name Sidney Gunn. I think it was $200.00. The next house was rated at $600.00 the Albert Brown house I think was $400.00, seems four or five hundred dollars. The Alfred Boom house I think was 2 to 3 hundred dollars. And the house that I live in I think they rated the building $1500.00. Wire fences all around it except in two places. Towards the Stewart place you have a wire fence, then there is the field they call 82 acres it is between, joins down there with the Dunlop farm, and there is about 550
30 panels of rail fence, the rest of it all wire. There is a lane runs through there. Well there is more than that, there is a cross fence there, that Mr. Coleman, Barn Coleman gave me the wire to build the fence between that field that I tend and the (field) that Mr. Sumner has. As to the cost of the wire fence which Mr. M. C. Coleman put up there, its value, I never built a wire fence, except to put up the wire on two at the time. The posts per mile, I would not get out for less than $50.00. I might be over estimating it, but I would hate to try it for less. The cost of wire, I heard them say, $100.00 per mile. I think over five miles of wire

fence was around there. I could not clear the land and cut it up, break it up and fix it where it would be—not for less than something like $4.00 per acre. I have never figured on it. A man taking his time and turning it over could do about an acre and a quarter per day, turning it over with a mule. In addition to clearing it up and burning the brush, etc.

Q. How much of these improvements have been erected on the place in four years prior to the bankruptcy of M. C. Coleman.

A. He built that house I live in. That is the $1,500.00. They started to build it in 1913, they finished it by—I moved there before they got it done, I think, I moved the 6th of January, 1914. They built it in the early part of 1914 and 1913, say in 1913 and early part of 1914. That is all the improvements made along about that time, just that building. No lands cleared up or placed in cultivation within four years before bankruptcy, not that I know of. I have cleared up some little rough places in the field taken in, maybe 4 to 6 acres. They were done fenced.

Cross-examination:

The rental I agreed to pay of $1,000.00 per year was a good rental for that place, it was well rented at $1,000.00 per year. It put me to my best to do it.

Q. Well, in reference to the fencing, wire fencing, do you know who furnished any other wire outside of that cross fence, or the fence between the two.

A. Mr. Coleman furnished me some wire.

—. Mr. Barm Coleman?

A. Yes, sir.

Q. When did he furnish you that, was it prior to the time
31 Mr. M. C. Coleman went into bankruptcy?

A. Yes, sir, he furnished me three or four rules. I disremember which, this last Fall, winter, and the fall before that furnished three or four rolls, I disremember. I remember the time M. C. Coleman went into bankruptcy.

Q. He furnish you any before that, Mr. E. J. Coleman?

A. Since that time? Yes sir.

Q. Furnished other wire outside of the cross fence; you say he furnished the wire to put that up?

A. Other wire on the place? Mr. Math Coleman furnished me some wire. I disremember how many rolls, about a half mile of it, maybe more than that. I can not tell who furnished the balance of the six miles, it was there when I went over there. I do not know whether it was furnished by E. J. Coleman. I cannot tell the number of acres of the Rowan Durden place M. C. Coleman lived on. No idea. I do not know, but a good sized farm, my recollection Mr. Math Coleman told me about eight horse farm, but I won't be positive about that.

I never had any dealings with anybody but M. C. Coleman, when I rented it. E. J. Coleman was not present. Never had anything to say to me, nor me to him about it.

Redirect examination:

The rent notes were prepared, me and Math Coleman went to Swainsboro and H. Johnson, Clerk, he wrote them or had John Tyler, they were executed in the Clerk's office. When I executed them I gave them to Math Coleman. All five notes I handed him.

Q. Barm Coleman, as you call him, furnished you wire since M. C. Coleman went into bankruptcy, for what purpose was that furnished? You spoke about a cross-fence.

A. He never furnished me none to build, the cross-fence; that was the lane fence, the fence between me and Mr. Owen Sumlin. Between that tract of land and the tract that Owens Sumlin lived on. E. J. Coleman furnished that, Owens Sumlin married his daughter. He and her husband lived on the place near there. Adjoining this, yes, part of the same tract. Lige Coleman, member of Mr. Coleman's family has a tract of land near there, that is E. J. Cole-
32 man's son. His land adjoins mine, lane between me and him, runs right up to my house. He is E. J. Coleman's son. At the time I first rented this property from M. C. Coleman (Mr. Math Coleman), he told me he wanted to rent me a place that he had in charge for his father, and I rented it. A few days later he came back and told me—might have been a week, maybe a month, sometime afterwards he came to me and told me had had to back out of that; that his Pa had given it over to Lige and he moved over there and took it in. In renting this other then, I and Math Coleman discussed the matter of my renting, not only these premises, but a place that belonged to his father, he told me—we had rented it, and me and Arch Macon, in turpentine business together, and we had a negro who wanted to farm. He had a large family and I believe the negro had lived over there with Mr. Summerlin the year before and we had cropped the boxes right back all around in there, and he, the negro wanted the house to live in, and we had to rent the place for him to get the house and we rented it from Mr. Math Coleman.

Q. This is whose property he rented to you, you and Macon?

A. Mr. Barm Coleman, his father's property, that is what he said.

Q. Was that this place and another place?

A. That place he lives on, same tract.

Q. Not a part of the 277 acres covered by the plat.

A. No sir.

Now, when I wanted to rent the whole place from him, later on, then Math Coleman talked to me about also renting that same piece of land he had previously rented to me for the negro. He said he done it for his father. He said he would like to rent me that too, and the negro that was living on it was going to work for me, and I made arrangements for him to stay right on where he was. And I say subsequently Math told me he couldn't arrange to rent me that particular piece of land, that belonged to his father, and that his family gave it to Lige, that is what he told me, and of course, the papers were not drawn up, and of course it was satisfactory to back out. That was not all in the same transaction and conversation in which he talked to me about renting this piece of land we are suing for. Not

right at the same time. It came a little later on—came and told me he would like to rent that piece.

33 Q. In that conversation or any *any* other, did he ever state and claim anything other than that this 237 acres tract was his, M. C. Coleman's?

A. No sir, that was all he said, just "his place," there, that he wanted to rent it.

Recross-examination:

Mr. Barm Coleman's son moved on this place that Math did not rent to me, Math told me he wanted to give that place over to him. He did move on it, he did not live on it himself, he built him a house over there adjoining, and moved negroes on it, same tract. He took charge of that tract. That is a part of the original tract that this land which is in dispute belonged to, it is all known as the Phillips tract, and M. C. Coleman rented me part of that, and took my rent note. And the other part of it, the son of Mr. Coleman, the defendant, moved on there and took charge of it. I do not think that son when he moved there was over 25, might not have been that old.

Q. Now, the other place, that cross fence is built between, you may say Mr. Coleman's daughter——

A. Yes sir, Mr. Coleman furnished me some wire to build the cross fence; there wasn't any fence across there, and I hauled the wire down there to build it, but I got behind with my work, and I did not complete it, and the fence got all ramshackled, and I taken that wire up and built around on the outside, used it. I cannot tell you the time when the daughter of Mr. Coleman moved on this place, I cannot tell you who lived over there when I moved.

Q. After the defendant, Mr. Coleman here, sent wire over there twice to build the cross fence—Mr. Barm Coleman the defendant——

A. Not twice, not to build the cross fence. He sent wire once to build it, and I did not build it and he gave me wire——

Q. Where did the wire come from you were to build with and did not use it?

A. Math Coleman gave it to me. I got it at Norristown, off his platform, and he—I can tell you what he said about it?

Q. No, I am asking what you know about it, whose wire that was?

A. It was Math Coleman's. Well that is what I asked you just then, tell you what he said.

Q. I am asking you how you know?

A. I cannot tell you, Col. for I do not know whether it is his or not, but he said——

Q. You do not know?

A. No sir.

34 2nd redirect:

Math Coleman, I went to him for some wire and there was a railroad runs through the place, there is just a little slice off one side of a field, was a wire fence around it and the railroad had set in some

of the fence and ramshackled it up, and me and Math were around there and I asked him, "Mr. Coleman, we need some fence here too," he said, "Well, I will furnish you the wire and you put your fence here alongside the railroad, and leave the railroad on the outside." He said "Lige has got some, I will borrow it from him" and he told me to get it I went. Afterwards Lige Coleman, about a year come to see me for the wire, I told him I could do nothing about it. Math gave me the wire, look to him. He mentioned it to me one day near Math Coleman. I told Mr. Coleman, "I wish you would settle the matter with Mr. Lige. He thinks probably I got that wire." I says Mr. Math said he put it on the place, that is all.

F. C. GILLIS, witness for complainant testified:

I am a surveyor, and I executed that plat, paper handed to witness being a plat of an irregular shaped tract of land, with metes and bounds drawn on the scale of 20 chains to the inch, and the legend being as follows: "Georgia, Emanuel County, Surveyed for M. C. Coleman a tract of pine land containing two hundred and thirty seven acres, surveyed by, (signed) F. C. Gillis, Surveyed August 14th, 1905. The tract of land, within the bounds and lines given, shows the adjoining lands and boundaries to be, one side, bounded by E. J. Coleman, one side by J. W. Gillis, one side by Hester Barwick, and one side by J. C. Coleman. On the tract of land thus surveyed, appears written across the surveyed land, "M. C. Coleman," and "237 acres of pine land" and on one side the land is bounded by Reedy Creek."

Q. When did you execute that, Mr. Gillis, referring to the above plat.

A. I done the work in 1905. August 14th, 1905. I made the survey under the instructions of E. J. Coleman. He only instructed me to make that survey and said he was going to let Math have it, and that is all he told me about it. He pointed out the lines to me, told me where to run to. He told me to run from certain corner to head of branch and run down the branch to Red Creek; that is the dividing line between—that is the line cut off. The survey was made according to E. J. Coleman's instructions. All that I heard Mr. E. J. Coleman say about why he wanted the survey made, was that he was going to let Math have that part of the land that he had cut off, and that is all he did say about it.

Q. That is M. C. Coleman.

A. Yes, sir. I disremember now who paid for the survey. I made the original plat, of which this is a copy, and sent it through the mails to E. J. Coleman. The data from which I made this new plat, recently for the complainant, was from the original field books. From that field book it was surveyed off as M. C. Coleman's land, like it is here. I never did receive any acknowledgment from E. J. Coleman that he had received the original plat. All I know is that I mailed it to him, I suppose he got it.

Q. By due course of Mail?

A. Swainsboro address. At the time I made this survey, I think

some of the timber had been cut, and some of it was there. I think Mr. Rentz cut off a portion. Well, he left a good deal of timber on it, that is my recollection now, but I am not positive. I think Rentz cut it before I made the survey; I do not think what timber was on it, amounted to very much. Practically all the saw mill timber had been cut off. I do not remember the year Rentz cut the timber.

At the time I made the survey a portion of the land was in cultivation. I don't know how much. All of it was not new ground that had been cleared up, some of it tolerable old land. I don't know who cleared the land.

Cross-examination:

The survey was originally made in 1905, and was made at the request of E. J. Coleman. And I say at that time he told me that it was a piece of land he was going to allow Math to have and Math is M. C. Coleman. And I mailed the plat to him. He requested me to mail it to him. I mailed it to him. I do not know who was living on the piece of land belonging to E. J. Coleman adjoining this tract at that time. I do not know whether Math lived there at the time I made the survey, I cannot say.

Q. He had been living on this piece of land?

A. No sir, lived in the original Phillips house. And this is known as the Phillips survey or part of it.

36 Q. M. C. Coleman lived in the old Phillips house which is not covered by this survey?

A. No sir, not covered by this survey. There was a house on this land at that time, Mr. Cox lived on that land. I do not recall how many houses, I think the timber had been pretty well cut off. That is the only conversation I ever had with Mr. Coleman about this. I never did have any conversation with M. C. Coleman about surveying the land, or anything about that.

(By the Master):

Q. Are you the County Surveyor?

A. No sir, I was not at that time. I have been County Surveyor, but was not then. I don't recall but one of the chain carriers, that was Tom Cox. That is the Mr. Cox here today.

Q. You do not know who he was there in possession under, at that time?

A. I do not know, but was under the impression that he got into possession through Mr. Coleman. I do not know that to be a fact; that is just an opinion of mine.

Q. You know whether M. C. Coleman has been in possession of that tract of land ever since that time, the time you made that survey up until his bankruptcy, either by himself or by tenants or by hands working for him?

A. Well, I really don't know that I do, Colonel. It has been the general talk that it belonged to Math Coleman and people that moved on the place generally made trade with him. That is all I know about it.

L. A. McCRARY, witness for plaintiff, testified:

I am cashier of the Bank of Norristown. It extended credit to M. C. Coleman. I did not take charge until August 1914, August 3rd. At that time M. C. Coleman owed the bank around $6000.00.

Q. Was any of that extended at that time.

A. Yes sir, it was a note, were renewed. Part of it was in the shape of overdrafts. At the time of these transactions M. C. Coleman was in possession of this tract of land the complainant is suing for by tenant. I knew and the officials who made the transactions knew of this particular tract of land, they told me. I knew of this particular tract of land as an official of the bank.

Q. Did you extend credit on the faith of the ownership of M. C. Coleman of this tract of land?

37 A. I was not credit man at that time, because I had just come in, and I didn't know Mr. Coleman.

Q. Was any credit extended on the faith of the ownership of that tract of land?

A. Yes sir. Mr. Coleman did not have any other assets at that time that I know of. He was running a shingle mill, he had some personal property.

Q. Did you, as cashier of the bank, or the bank officials to your knowledge have any notice of any claim of E. J. Coleman to this tract of land?

A. No sir, not that I know of.

Q. When was it that the bank first received any notice of the claim of E. J. Coleman to this tract of land?

A. No notice at all until Mr. M. C. Coleman had gone into bankruptcy. E. J. Coleman is the father of M. C. Coleman, E. J. Coleman is a man of some means. He is either the third or the fourth richest man in Emanuel County. He is generally reputed to be worth seventy-five thousand dollars. He is a large land owner. I never investigated the records for the particular purpose, but it is understood that he owns quite a lot.

Cross-examination:

I was not credit man when these overdrafts and different notice were given at the bank.

Q. How do you know that the bank extended credit on the strength of this land that is in dispute.

A. Well, my directors——

Q. That is what I thought.

Witness: I looked after the renewals, but was not there when the original transactions were made. This land was worth more than the amount Mr. Coleman owed the bank.

Q. Why did you take security on that note?

A. Custom of the bank to take security. I lent it on the land and took security according to custom, that is the way I did it.

Q. You loaned him on his own responsibility and took security according to custom?

A. It is according to what a man is worth, as to the amount of credit extended to him. I did not look to find out who owned that piece of property.

Q. So you didn't know who owned it?

A. I takes the record that is gotten up by Mr. —— that
38 he owns so many acres of land, and I report that to my directors and I have that on file there now.

Q. Is that land described?

A. No sir, not described in that, but is described in the rent note which he was to place with the bank, and I had to collect from Dan Davis, the piece of land described in that note and I presumed that was the same piece of land. I acted on a presumption and not on my knowledge.

Redirect examination:

I say I did collect the rent note from Dan Davis, he paid it to the bank for Mr. Coleman. That the first rent note for 1914, yes, during the fall of 1914. It was collected for the account of M. C. Coleman. 1915 I collected, went to E. J. Coleman. He had the note and turned it over to me for collection.

Q. And since the year 1915, E. J. turned them over?

A Yes sir. In 1914 I collected rent on the same place on note turned over to me by M. C. Coleman, note made payable to M. C. Coleman and went to M. C. Coleman. And in 1915 I accounted to E. J. Coleman.

DAN DAVIS, witness for plaintiff recalled, testified:

I say the rental value of the premises, the entire premises I am renting is $1,000.00 per year. I stated in my other testimony that there was something like 35 acres of that land of the Stewart place, which I cultivate and which was sold by the trustee. I judge about 35 acres. I think it would be about $125.00 for that. Ain't any house on it. There was a house there, but I tore it down and moved it to where I live, by request of Mr. Coleman—said I could do it—and the other would be $875.00. All of these settlements and improvements built there on this piece of land are covered by this plat, they are on that.

M. C. COLEMAN, witness for the plaintiff, he being the Bankrupt, testified:

I was sworn by the Referee at the examination that I submitted to
39 him in the Bankrupt Court at the first meeting of my creditors. And I testified at that hearing.

Q. Your schedules in bankruptcy show that you owed at the time you filed your bankruptcy petition, $16,038.08 unsecured claims, and $995.00 of notes and bills which ought to be paid by others, and $1,837.00 of accommodation paper. You owed practically all of that amount shown in your schedules, which were filed May 8th, 1915,—you owed practically all that amount on January 1st, 1915, did you not?

A. Well, I might have owed about the amount; I guess so, yes sir. Practically that amount. I think there wasn't any property including this land that is in controversy now, that I had any rights to at the time that I filed my bankruptcy petition, May 8th, 1915, but what I had a right to on January 1st, 1915, the assets I scheduled on May 8th, 1915, I owned those assets on January 1st, 1915, I think so.

All valued at, on January 1st, practically what they were, May 8th. 1915, about that. My schedules show $9,071. of assets and I owed $19,077.00 of debts when I filed the petition so that I practically owed the same amount of debts and had practically the same amount of assets on January 1st, 1915. About that. I suppose I was insolvent on January 1st, 1915. My insolvency did not happen all of a sudden.

Q. How long before January 1st, 1915, do you account that you were insolvent?

A. Why about August, 1914, I suppose so, about the time the European War. In the fall of 1914 suits were filed against me and judgments taken against me in the courts of Emanuel County. And it was not until those suits had been filed against me, and judgments rendered against me, that I turned the rent notes back to my father. There had been suits filed against me for quite a long time, four or five years before that. I don't remember that some judgments were rendered against me too.

Q. I am going to read to you some questions that were asked you by the stenographer's notes of the testimony before the Referee, and I am going to read the questions, and going to read your answers, and I am going to ask you now if they are true.

The following questions, reading from the said report of testimony were propounded and thus answered:

40 "Q. Mr. Coleman, the 50 acre place you spoke of, to whom is it rented this year?

A. Dan Davis."

That is true is it not?

A. Yes sir.

"Q. Did he rent that as a separate proposition; is he giving you rent for it?

A. I have his note for it."

That is true is it not?

A. Yes sir, I had his note altogether.

"Q. Have you that note?

A. No, sir, my father has that note all together."

That is true?

A. Yes sir.

"Q. When did you turn the note over to your father?

A. In January or February; I don't remember which."

That is true?

A. Yes sir.

Q. This examination took place on June, 1915?

"Q. Did you turn him over any other rent notes at that time?

A. No sir, none."

That is true, is it not?

A. Yes sir.

"Q. Well, you used the term "all together" a while ago. What did you mean by that?

A. Well, Mr. Davis has a ten horse farm rented down there, a place that my father was to give me, and he never did make me any deed to it, and it was all in there together and I bought it, and when I rented it I rented it all together, $1,000.00 for 4 years."

Is that true?

A. Well, now about all of it, I bought the fifty acres.

Q. But the rest of that true?

A. Well I got the fifty acres. And the other is the tract involved in this case. I bought the fifty acres. The rest of the answer, "Well, Mr. Davis has a 10 horse farm rented down there, a place that my father was to give me, and he never did make me any deed to it, and it was all together and I bought it, "that true I only bought 50 acres. And it is true that I answered "and when I rented it all together $1,000.00 for four years," and that is true. In the matter of the fifty acres of land, the contract expires in 1918. I think that is true, I am not sure when the lease runs out.

"Q. Did he give you notes for the full period, $1,000 for each year?

A. Yes sir."

"Q. Did you turn them over to your father?

A. Yes sir."

41 Q. That's true?

A. Yes sir, they were turned over to him in January or February, that is true.

"Q. What for?

A. Because I considered it his property. He had never given me a deed. He could trade with Davis and keep him or run him off."

That is your answer to that?

A. Yes sir.

"Q. What agreement did you make with your father with reference to this place? You spoke about he was to give it to you. Explain what agreement was made—All about the transaction."

Here is your answer,

"I was just married and started housekeeping and moved on this place."

That is true?

A. Yes sir, I did not move on this particular place.

"Q. That was fourteen years ago?

A. About 14 years ago—and there was some land off in the woods and he told me if I could take it in I could have it. I went in there and cleared up—cultivated it, fenced it and cleared it up, a 10 horse farm, and I have been cutting the rents out of it, but I never got no deed to it."

Is that true?

A. Yes sir.

"Q. All in the woods?

A. Yes sir."

Q. No buildings?
A. No sir.
"Q. How many settlements did you build on it?
A. Some 8 or 9 I don't remember."
All that is true is it not?
A. Yes sir.
"Q. How many acres in the tract?
A. 227 acres.

Q. So you testified before the Referee and you now testify that you were married about 14 years before the time this testimony was taken and your father had this land in the woods cut off from other lands, and promised to give it to you, and you took charge of it, and you took the rent notes ever since that time, up to the time you turned over the rent notes to him, but your father never made you a deed to it, and for that reason you determined that he should take the rent notes, because he never had given you a deed?

A. Well, a short while, I don't remember how long, after the piece of land was cut off, he came back and said that there was more of the property than he could make me a deed to and make the other children have the same amount, and that he was not going to make me a deed, that he would sell it to me for so much, and the price was never agreed on. I never did live on the place, never did live a day on the place.

Q. Mr. Coleman, do you know that you did not tell the Referee anything about that at all?

A. I don't remember that I did.

42 Q. You were asked on that occasion to tell about the transaction, and you testified before the Referee that ever since you had been in charge of the place—that your father promised to give it to you, that you were actually in possession, that you took rent for it, and that the reason you turned the rent notes back in January or February, 1915, was because you did not have deed to the land?

A. I think in 1910 was when I got another place. I know I would not go to the place over there on that account. I did not feel like going to work the balance of my days, or a good long time, and the balance of the children come in and get the benefit of my work. I would not go to the place myself. I bought another place and moved to it. I did not go to this place.

Q. But you spent your money in improving this land in question?

A. Some little spent—I did not improve the land, put up fences on the land, and represented myself as the owner of the land. Wasn't any of my neighbors didn't know that it wasn't mine. I rented it to Mr. Davis, and I collected the rent and used the money as my own.

Q. And you did not come up to the question of deed or no deed, until after you were insolvent?

A. It wasn't asked me. The question wasn't asked if I had a deed.

I turned over everything that I had, that was mine to the bankrupt court, every penny's worth that I had of mine, that that I

didn't have, of course I did not turn it over. I am represented by Mr. F. H. Saffold, and my father is represented by the same Mr. Saffold. I bought the Rowan Durden place most of it on time, principal part on time. I agreed to pay $10,000.00, I paid $4,000.00 cash balance, $6,000.00 on time. I think it was in February, 1910, I moved to the Rowan Durden place, I am not positive. But I continued to rent this other piece of land and was taking the rents from it all along—this land in question. I think it was in 1900 or 1901 I married.

Q. It was shortly after you were married that you went into possession of this land?

A. Why, two or three years, something like that. I do not know how much to figure that I spent in improving that land. I was living on another place adjoining it, stayed there four years, I think. I think at the end of four years I had took in a two horse farm of this land, I think that was it. When I turned over these rent notes to my father, I did not tell him I was in financial trouble.

43 Q. He did not know that you were in financial trouble?

A. No, I never told him anything like it.

Q. What explanation did you make to him, after 12 or 14 years' use of all the rents of this property, that you should decide all of a sudden to turn the rent notes back to him and let him get the money?

A. Well, I knew that I had to give up what I had, and this was his property. I had been using the property, getting the benefit of it, but it was his property and I would turn it back to him if he would take charge of it and get the property for his (out of) debt. I know that I saw him not two months before I went into bankruptcy, possibly a month afterwards, I think I mailed him the notes.

Q. And at the time you turned the notes back to your father your property had been levied on and advertised for sale?

A. I do not know how soon—how early before or how late, up to the time I went into bankruptcy, I don't remember.

Cross examination:

It is a fact that the first conversation between me and my father about this tract of land was that he would make a deed of gift to it, he would give it to me and make me a deed, before I went over there, before I moved over there. I do not know sir, that it was before I moved over there, right at this old place. I think he told me, the place over there, that I could go over there and if I could make a living on it, something like that, and the subsequent conversation. Then he came to me afterwards and offered to sell me the place, and told me he would take my notes for it and put them notes away, and I could pay them whenever I could. I never did do it. He did not at any time give me this piece of land. I did not at any time make any valuable improvements on it under the idea that he had given it to me. I have always acknowledged his right of property. I mention one instance when it was necessary and there was something about to be done to this property like building a railroad through it, I don't remember the year, but it was when this Wrightsville, Adrian

and Lyons Railroad was going from Lyons to Wrightsville, and there was E. J. Sumeral, — Samuels and Mr. Joe Rowland, all came to my house and ate dinner, to get permission to go through this property. I explained to them the situation it was in. I said, "Now, you can go to my father and see him; he may possibly sell you or give
44 you a right of way through it." They ate dinner at my house and we all went to Pa's in the evening and he made an agreement for them to go through this property, and it was I think about 6 or 7 years ago. I am not sure when it was. I have never paid taxes on it. I have never given it in as my property. My father furnished part of the money for the improvements I made there, and I furnished part. I did not pay any rent. I do not think the place was worth more in rental value than the amount of money that I expended by way of improvements. My experience with farms is that it takes about as much profit as you can get out of it in the year to keep it up. I did not make any money by running it, I don't consider that I did. This place that I rented, it belonged to my father. I did not pay any rent for them. He never gave me it. My sister is living on a part of this original tract, her piece of property, I think. My father told her to move over to this place, and work it, and get the benefit of it. If she could get any money out of it, the proceeds were hers, but the property was not considered hers, I don't suppose. My father had the right and dominion over this piece of property now in dispute all the time since I have been there. I recognized my father's title, ownership and right to control this property as his own, all the time while I was there. From the time I went there until the time I turned it over to him. Any time that he would have told me that he wanted it I would have given it up, because I knew it was his. It wasn't mine.

I never made a statement to any of my creditors, especially the Bank of Norristown, F. C. Gillis, Bartow Moore, M. B. Gillis, Lot Youmans or John E. Youmans that I owned this property or held it out as any inducement for them to sign any paper of mine or to lend me any money.

Q. Did you ever get any money for which the parties I have named are responsible, for the purpose of putting any improvements on this property?

A. Tell them that I—No sir.

Redirect examination:

The arrangement I claim to have had with my father was that I could keep the rents of this property until he called for them.

Q. He never did call for them. You have testified that you
45 sent them over to him without his calling for them?

A. No, I considered it his property.

Q. I know, but your arrangement with him was that you got this property——

A. We did not have any arrangement. He told me to go over there and work the place, if I worked it on halves, worked it myself or rented it.

Q. That you kept the rents?

A. Yes sir. And I had kept the rents until the time of my bankruptcy and used them as my own. Used my own money and time and labor in improving the property. And my arrangement with him was that these rents belonged to me, and I say that he has made a similar arrangement with my sister, I think that she has—I am satisfied.

Q. These rent notes were yours when you took them under that arrangement this $5000.00 of rent notes were your- under the arrangement that you made with your father?

A. Answer Yes sir.

If I had not gone into Bankruptcy I would have been collecting all these rent notes up to the present time.

Q. So that you did deprive yourself of $4000.00 of rent notes because of your insolvency and because you wanted your father to have them?

A. Yes, it was his'n.

Q. No, under your testimony it was yours; this rent was yours. Your father said you could have the rents of this property. Now, you voluntarily deprived yourself of $4000.00 after you became insolvent?

A. No sir, I gave them up before I—I didn't say my father didn't know anything about my financial condition, he knew that I was in debt, he knew that suits were being filed against me, I do not know that we talked it over. I was borrowing money from him often. I regard him as a creditor. I do not know how much I owe him, I don't remember. I know it was his property when he called for it and I knew that he would want it.

Q. But if he didn't call for it.

A. But I knew he would. I don't understand your question, which is "Will you explain to the Court how you got $16,000.00 of credit if you didn't own this land? Will you tell the court what other assets you had outside of the equity you had in the Rowan Durden place, other than this land and the personal property on this land. I had some assets except this particular piece of land that is being sued for now, and personal property on this land, and the equity in the Rowan Durden place, some property in Swainsboro, I paid $1000.00, no mortgage on it. I had 15 or 16 mules,
46 don't know what they were worth, they were mortgaged. I had a few hogs, and I had the rents that I was taking out of this land in dispute. I do not know what all that was worth. It was worth $8000 to $10,000.00 including the Rowan Durden place. My uncle finished paying for the Rowan Durden place $6200.00. I had $4000.00 equity in that place, lot at Swainsboro, $1000.00, 15 head of mules that were mortgaged, and on that with this property I want to say that I got $16,000 of credit. I never told a man in my life, that I wanted to go on my note or give them to understand that this place was mine, for any credit note. I don't know how much I owed my father. Any money that he let me have in the past he charged to me. He has got some of my notes. I do not know how

much I owed him in 1915. I had been owing him 8 or 10 years, along different times.

Q. Lot of it barred by the statutes of limitations, wasn't it?

A. How is that?

Q. Wasn't it over 10 years?

A. Could have been I suppose.

Q. And he has taken these notes from you and applied them to this claim as his property?

A. The notes covered rents from his property.

Q. But they were your notes?

A. The place was his. He could let Mr. Davis stay or run him off—opti-nal with him. If he wanted to rent to Davis, and let Davis stay there, it was his property—I considered it his property—and let me turn the notes back over to him. If he wanted to rent it to him, all right, if he considered the rent secure. I consider that I would voluntarily give that property up if I were not in bankruptcy and my father asked me for it.

Q. After he promised to give it to you?

A. He promised to give it to me, when we first talked about it. He concluded that there was more, he said, then he could give and deal with all the children alike.

Q. But he had this part cut off?

A. He said if I would give him notes—no specified amount what the notes was to be—for this property, he would take them and put them away in his papers, and at his death, in the division of his estate, them notes would come in against me. Well, I would not move to the place, when I bought the Rowan Durden place—would not move to it on that account. I wanted to buy a place to treat and make it so I could say it was mine. The notes were to be charged up as my part in the estate.

47 Q. And be cancelled at his death, and you never would have to pay them in the meantime?

A. Well, I would not have gotten them.

Q. Then you would have had the property.

A. The property would have went to some of the other children. I would not have got the benefit of it. And in spite of that fact I spent money in improving some of it. This subsequent conversation I am supposed to have had with my father, after he promised to give me the land and I had gone into possession, was a month or two after that; possibly might not have been that long, or may have been longer; 14 or 15 years ago, possibly 16.

Q. So he did promise to give it to you and you did go into possession of it under that promise?

A. No sir, I never went into possession of it, I cleared up a little of it.

Q. That was before 1905, that this second arrangement was made, because you went over there shortly after you were married, 1902, or 1903?

A. May have been four or five years I don't remember.

I stayed on the place four years, then moved back —rode turpentine four years. I don't remember whether before this or after this.

I do not remember definitely when this arrangement was made. It might have been more than two months after he had promised it, but I do not know whether it was two months or more.

Q. And he promised to give it to you 14 years, before your testimony was taken?

A. I do not know if it was 14, may have been 12 or 14, I don't remember. This railroad did not go through some land of my father's other than this tract. This railroad went through the Phillips place. The Phillips place had 1000 acres. It went through only a part of the Phillips tract, went through a corner about as wide as this room (the U. S. Court Room at Savannah.)

I did not make a deed to the railroad company, none was made that I know of. I do not know whether the railroad got a deed or not. That was six or seven years ago. The men representing the railroad were E. J. Summerlin, —— Samuels, and J. H. Rowland. They live in Johnson County. They are not here today. I went with them to my father's. I don't remember as I do know what arrangement. I didn't stay with them all the time. I was around where my mother was around the house. I say the second conversation that I do not remember when it took place, was for me
48 to agree on a valuation and then give notes for it, and then at my father's death, why then these notes would be charged up against me with the estate.

Q. And you were never to pay those notes in his life time?

A. That is the reason I did not give the notes, because I did not know I had a cent made to pay it. I did not want the notes there at his death to be charged against me. I didn't want that.

Q. You rather take the land and use the rents of the land all your life up to his death?

A. I would not do it. I went and bought another place.

Q. You would keep the rents of the place until his death and say it was his place, his if he called for it?

A. Anytime I knew it was his.

Q. As long as he didn't call for it, it was your place?

A. If he called——

Q. So long as he didn't call for it?

A. I got part of the profits as long as I could pay.

Q. As long as you wanted it?

A. So long as I kept up—As long as I kept it I got the profits. I kept it as long as I could. It was his'n.

Q. And when these creditors got to entering suits in the courts then for the first time in 12 years you gave it to your father? Isn't that so?

A. Well, I guess it is.

Recross-examination:

Mr. Rowland one of the parties who was present when the railroad transaction occurred, he is not able to come to court. Mr. S— was at his home, I don't know why he is not here today. He

promised me to be here today. I went by there to make arrangements with him to come. Mr. Rowland was not able to come.

Q. Now something was said about your giving the place back to your father; you never had any place to give him, did you?

A. No sir.

R. A. FLANDERS, being duly sworn, testified:

I am the trustee for this estate, it would not be possible to pay the indebtedness or claims proven against the bankrupt's estate in full without this property that is now being sued for. I cannot tell exactly how much the assets of the estate will realize, but something little above $2000.00. I do not think it will go over $3000.00. I have administered the assets of the estate, except the property we are suing for, this matter that is to be determined.

49 The rent note dated December 11th, 1913, due October 1st, 1915, above referred to, also rent note of same date and due October 1st, 1916, each for $1,000.00 and both payable to M. C. Coleman landlord or bearer were duly offered in evidence.

Executions in favor of Baltimore Bargain House for $1,103.74, one in favor of Hutchinson Shoe Co., for $33.15 with entry of levy dated December 9th, 1914, were introduced in evidence, all being against M. C. Coleman.

Also fi. fa. of Farquhar Machinery Co., against M. C. Coleman $297.30 with entry of levy of Sheriff under date Dec. 4th, 1914, also fi. fa. against M. C. Coleman, $116.75.

At this point Mr. Saffold requested an adjournment until March 12th (tomorrow) on account of the physical condition of E. J. Coleman, the defendant who he stated he desired to examine. The hearing proceeded March 12th, 1917, at 10 A. M.

R. A. FLANDERS, witness for complainant recalled, on cross examination testified.

I sold the 50 acres out of this same tract, adjoining this tract, belonging to M. C. Coleman, at public sale, it brought $400.00. About $8.00 per acre. It was sold after due and proper advertisement before the public sale. Brought $8.00 per acre. I have never examined the character of the land of the 50 acres, and the land in dispute, from that stand point of character. There is no building on the 50 acres of land. It seems to be 50 acres there that would be totally isolated from anybody except Mr. E. J. Coleman, and the property sued for in this case. It adjoins other lands than his? It wasn't so that you could not go into and out of it without going through other lands?

A. I am not quite sure about that, but my understanding is that it is completely surrounded by other lands. It is not completely surrounded by this land in dispute. It is all right there in this one body. I really never have looked at the land from the standpoint of its character as to productiveness. I would think all about an average. The rental value of the 35 acres is worth per acre, the same as the rest of the property if it had an equal share of the buildings

50 it would be. Yes, leaving out the buildings for farming purposes, worth as much as the other farming lands. Of course you have got to have buildings on any land to run it. If you have no buildings on the land, and they have got to rent buildings, it would be worth less per acre than the rest of the property in dispute.

Redirect examination:

I think this 50 acres would be more valuable to the person who is owner of this tract of land we are suing for as being a part, lumped in as a part of this land, with the improvements on the land we are suing for, than if it was disconnected from this land and sold separately. E. J. Coleman, bought the 50 acres. If it had the character of houses on it that this land we are suing for has on it, it is worth $25.00 or $30.00 per acre, if it had buildings on it in proportion to what would be required to make it a farm.

E. J. COLEMAN, the defendant testified:

This piece of land in dispute was never given to my son. He had the use of it. When the boy was young, married, he went over to this old farm. I sent him over there. The farm wasn't doing much, and he lived there for I don't know how long. I forget the days and the length of time. But he lived there three or four years, and was clearing this piece of new land, clearing up some new land and I thought I would give it to him, intended to do it, went over there and surveyed the land out and done it all in good faith and kept thinking about it, that I didn't see how I could equalize the thing with my children, and went back to him, and pretty soon, about the first time I reckon, that he was back at my place, after surveying it, I told him that I could not satisfy myself to do that, that I would not make a deed to this property. I says, "Now I will sell it to you at the price the land is going at, and you can give me a note, and if you never pay it, it will stand and bear interest, and that will put you on an equality with my other children. He never did give me any note, neglected to do it, and the thing died out from then until now, and it has lay there that way ever since. And he went on and kept drawing money out of me, loans, and improving the land, and not a thing said in the family about it, and that he was getting more than anybody else. I have remarked time and again that he was improving of my property, doing as much good as it was him, and I
51 thought the money well spent.

As far as I know, all during his possession over there he has recognized my ownership, and title and dominion over that land, always. I never saw an act from the boy in my life exercising any privileges like it was his'n Never have seen any sign of it in my life—no talk, no acts that I ever heard him doing. It always went by his place. Well, a negro that rents crops from me, that is his place. I never paid any attention to such as that. I have paid the taxes on this property, ever- time it has been paid, and if he ever paid any taxes on it, I don't know, nor I never have known—never saw a thing, nothing to indicate it.

Q. Well, now Mr. Coleman, this 50 acres that they say 35 acres cleared on, that you bought at this sale from Mr. Flanders, as trustee, what is the character or class of that land for farming purposes, relative to the rest of this place?

A. Well, now I cannot answer that question very well, because I never was on that land but once in my life that I know of. Before it was sold I wanted to take that up and went over there to look at it. see what it was. I didn't want somebody else to go and cut it off in that form—no cross fence or nothing between it. The part that I went on is as good as any land in the field, but back outside of the creek—I could not walk over there. I did not go back—just went in the field, on a ridge and looked at the surroundings.

Of the 50 acre tract, well some of it is not cleared; I think somebody said here baout 30 or 35 acres that was cleared. They know more about it than anybody, but there was a big cleared place, anyhow.

Q. Well, is that place, that piece that you were on, that cleared and suitable for cultivation?

A. Yes sir.

That land in comparison with the cleared land on the other tract, I think it is fully as good. That 35 acres is worth a year for a farm just as much as the other, just about the same class; the rental I would suppose was worth about the same.

Q. Well, you refer to these rent notes over this place; how did you receive them?

A. He sent them notes to me by another little boy, by this other boy now that is living over there at that other place, named
52 Lige. How I came to receive those notes and collect them, well, the boy owed me so much that when I received them I was pretty glad to get hold of them. I thought I would get that much maybe, but you understand, he never mentioned it to me, what to do with them, nor narry thing about it. He just told the boy to get those notes. Well, I allowed that he gave them to me to get something justly due me.

When I got them, I considered them mine, because it was given for stuff that belonged to me.

Q. Now, Mr. Coleman, is there anything else you want to state about this matter? That is all I think of to ask you. You can do it now? No answer.

Cross-examination:

I swore to the answer I filed in this case, and swore that at the time that my son sent me the four notes, that I was not advised of my son's condition. I did not know anything about his financial condition, never heard of it. If I did, why I do not remember. I knew they kept suing him and levying on his stuff, I knew that very well. I knew that at the time I took the notes.

Q. And at the time you got the notes you were very glad to get them because you judged that he intended that you should take those notes so as to pay you money that he owed you?

A. I allowed he thought I would save them. Right along that line that I would get them as a creditor of my son and realize on those notes for the amount of money that he owed me. I cannot tell how much he owed me. I have not got any check that I ever issued, showing payment of money to him, not a thing in the world. I was examined before the Referee about this transaction between me and my son. I don't remember being questioned particularly about any checks to show that money that I let my son have. I haven't looked for the checks. I doubt if I would have them if I ever paid him money by checks. I do not know how much nor the dates. Been owing me all the time. The amounts I let him have from time to time were not given he would come and get $100.00 or $500.00 and I would give him a check for the money, and very often tell him to pay back at a certain time. I did not charge it up against him. Didn't make any entry at all, and haven't looked for those checks, had no cause to look for them. I would not have found them anyway. I knew he was over there, but I do not know about the M. C. Coleman place. I knew that he was taking all the rents from this property from the time he married, 1903, to the time he turned the rent notes over. He took that continuously during that time.

53

Q. Will you please tell the Court what act of dominion you exercised over this land in dispute during those 12 years?

A. I didn't have but mighty little money and give it to the boy, if he could make a living on it, to do it.

When I return my property, I would just make a return of so many acres; never specified in any tax return this particular tract of land, it was included with the other tracts. I cannot tell you how many acres of land I owned in 1902. I had 2000, I think I had 3000, I don't know nothing about that though. I don't remember how many I had. I do not remember how many acres I returned for taxation in them days. It was the custom to make a tax return in Emanuel County, to return so many acres cleared land, that is to say, so many acres cultivated and so many acres wild land. And would not be any way of telling from that tax return what particular lands I intended should be cleared land, and what particular lands should be wild lands. I think all of the land with farms on it is always given in in Emanuel County as improved lands. But nothing would be specified in my returns as to which lands would be included in this lump sum acreage.

Q. So that, if it so happened that in all your returns for taxation during this time you did not return all the acreage that you happened to own, then it is just mere guess work, so far as the records show, as to whether you ever returned this specific land for taxation?

A. Well, it was always included, I always give in that body of land in that place for 1,000 acres. I do not know how many acres I returned for taxation in 1907, 1906, 1910. In 1915 I guess I gave in about 5,600 acres or seven, somewhere along there, I ain't certain.

—. 5,700 acres in 1915?

A. Yes sir.

Q. Is that all the acreage that you owned?

A. That is all I paid taxes on. I suppose that it is all I own. I keep a record of my tax lists, after I give in my taxes, and I take a copy of that and the next year I copy my taxes from that
54 *that*, if I ain't bought any more land. All the lands I own, the deeds are recorded. I reckon every acre of land I own in Emanuel County, deeds were recorded. The tax officials never required me to segregate each particular tract of land in my return. No, I didn't promise to give the land to my son, when I had the survey made, I intended it. I don't remember that talk with the surveyor that the survey was for M. C. Coleman. I might have done that. I might have told him to survey it to go to that boy. I had the intention to give my son that land and he understood that.

Q. And then you testify that afterwards, after the survey was made, that you told your son that that was too much?

A. I do not know that now. I told him—I didn't understand it that way. I told him "I don't see how I can do that; I can't satisfy myself that I had so many children, to give him all that body of land then and leave it there in that shape, that at my death they would all scramble about it, and I would not do it." The date of that conversation that I had was right after the survey that I got from Gillis, I guess Gillis's figures, I am satisfied his figures are about right there, for the survey.

Q. You said your arrangement with him was that he could take that land at what lands were selling for then and give you notes for it, with interest, and then at my death he would be charged with that amount?

A. That was the intention; I don't remember the words. I cannot answer the question "what was the land selling for at that time," now. I don't suppose it was selling at $10. per acre.

Q. You don't think this land was worth more than $10.00 per acre?

A. I tell you what I done; just about the time that survey was made there was a move up to get Jim L. Moore's place—perfectly good place—land is good. I bought 100 acres from that land, right at this time for $2.00 per acre.

I didn't tell you that I cancelled this arrangement with my son because 225 acres at $2.00 per acre was too much to give him. I did not say as much. I did not say that the reason I cancelled the proposed arrangement had with my son was because it was not fair to the other children. I said that I was not satisfied to deed him that piece of land, that I didn't see how I could equalize the other
55 part of the matter with my children.

Q. Couldn't equalize a matter of five or six hundred dollars between him and the other children? What do you mean by that? You say land right by this land was sold at $2.00 per acre, a part of it, a short while before that. Yet in spite of that fact, your son has been up to 1913 putting out money in improving this property?

A. Yes sir.

Q. Mr. Coleman, if your son had never gotten into financial difficulties he would be collecting the rents today, would he not?

A. No, sir, Yes he would not, because he——

Q. If he had never gotten into trouble—if he hadn't this trouble and did not owe you any more, he would have been collecting the rents today?

A. I had made up my mind a good while, a year or two, that I was going on him for the rents, that I would not stand it, that he owed me too much money. I know enough to cover all that.

Q. You haven't got any evidence of the amounts—no record at all?

A. I told you that before—I tore up $3,500 of his notes the winter before this last. I told you that over yonder in that other examination, *the* he had them old notes lying there against him and him helpless to pay. I thought my time was about up, and if I died and left that thing in that shape, that boy would not get nothing, and I tore them notes up winter before last. The notes were dated back in 1903, or '4 or '5. Somewhere along there. They were not barred by the statute of limitations in a family matter like that. I do not know that they were barred when I tore them up, I am no lawyer.

Q. Don't know whether they were barred or not, but anyhow you intended to acquit him?

A. If my health had not been in such shape that it was in, I would not have——

I think I can explain your question "If you could not let your son have this land which you intended to give him because it would not be fair with the other children, will you explain how you cancelled $3,500 of indebtedness against him and still were fair with the other children?" very well. My conscience is clear, anyway. When I cancelled the notes I knowed that he was in debt a way yonder to everybody. I did not know who he did owe or how much; Parties on notes I never knew he owed until yesterday, and then there was $1,000 note I never heard of before. I knew he
56 was indebted to everybody, and if I died winter before last with these notes lying there in my safe against him, that he would not get anything from my estate, and while he had had the benefit of this money, and I did not want—He has like myself got a big house full of children, and I did not want to leave him in mean shape with children.

Q. You were willing to be more fair with one child than the others?

A. I do not know. I would have been that way with any of the balance of them. I intended the right thing, the way I construed it, that that was a good body of land and cutting it off of another tract there, that he might—the rest might think that he got more than they did, and I would leave the matter up to them; and, personally, I think that was right. I have done the very same with all the children now. I ain't made any difference. I have got two more there on the same tract, under the very identical form that this boy went there.

Q. In other words, to keep the rents until your death?

A. Yes sir.

Q. But if they get into trouble with creditors, you would go and take them away?

A. I will sir, just as sure as they get in that shape. I do not know sir, that I think that a fair arrangement.

Q. In other words, theirs to use as an asset, but to be cancelled in the event their creditors come in—may go there and parties may credit them on the assumption that the land belongs to them——

A. I will object to that whenever any one tries for it. Whether I have got a right to it or not—it may not be law; I am no lawyer, but that is the way I feel about it, that the records is there in Emanuel County to show to whom the lands belong. If you advance money it is your business to go and see.

Q. You say in your answer to this bill, that you were not advised of your son's condition. Now, as I understand, you say that you were then advised of the fact that he was being sued and property of his was being levied on?

A. I knowed that I saw it. I take the Forest City Blade, it is our County paper, and they were continuously—been at it for years—advertising some of his property for sale. I knowed he was in debt. He sent these notes to me by a boy, and I never had any conversation with him at all. I never inquired of him as to his financial condition at the time or just before the time I got the notes. I don't know that it was ever mentioned. I never asked him to send
57 the notes, after 12 or 14 years.

Q. Never made any inquiry at all?

A. I said it was not—I don't guess it was ever mentioned. If it was, I don't remember, until we came to Savannah to that hearing a year or so ago. I never made any inquiry as to why he sent the notes, never mentioned it to him, he was right there in the county, he was accessible to me.

Q. And you never bothered to go to see and ask him what he meant by going around and handing over $4,000 of notes?

A. I reckon so. I never went around to ask him what he meant by that. I thought they came home where they belonged.

Q. As a debt owing to you?

A. No, no, right on that line. I would not have liked to give $4,000 for these notes when they came to me, but they proved to be all right—paid every time they came due. I have collected $2,000.00 on them. And I have got the other two notes. M. C. Coleman is my son. He has cleared about every bit of that land. He has built some houses on it, I cannot answer how many now. I never was in but one—two of them houses in my life.

Q. When were you there——?

A. But if you will, let me give you an estimate of the value of them houses?

Q. When were you there in those two houses?

A. Since he give it up to me I was in one of them, and ate dinner in the other house the day that we surveyed that piece of land that Gillis brought up to you. We ate dinner at that other house there that day.

Q. The other house, or one that he built?

A. And since he give it up to me, I went with Dan Davis to look

at its condition. He came to me up town and mentioned—said he wanted something done, and I went over to the house with him from where I was building another house near the place, and went into the house, and looked at it. I think that is all the time I was ever in that house. My son built that house, that I took dinner in at the time of the survey, and he built that after I had first told him to go over there and take this land. You see he settled on the old part of the farm when he first married and went over there, and then he went right across the branch and went to clearing on this new land. He done it some years after. I do not know how long. I paid no attention to the matter in the world.

I haven't proven any claim against my son's estate in the
58 bankrupt court.

Q. Reading from your testimony in regard to money that your son got from you directly—I asked you this question "You didn't give it to him?

A. Well, I didn't consider it giving it to him, but I guess it was all the same thing. He would come and ask for $150.00 or $100. or 4 or 5 hundred." That might have been my answer. That is only reasonable I would answer that way now if it was put up to me.

(Reading:) "Q. Did you take his notes?

A. No sir." Now I asked you this question as to the rent notes, "Why weren't you willing to let him collect these notes and turn the money over to you when he collected them?"

Answer, "I never objected to it. I reckon when he saw the scrape he was getting into he thought he had better secure me that much." That your answer?

A. Well, I guess that was about correct now. I never asked him why he done it. I had no reason for asking it.

It is correct, that I answered, "I didn't know anything, but I imagined he was in bad shape, but I never thought about him going into bankruptcy. I knowed that he was in bad shape. I could see signs a plenty of that, because they were suing him continuously and advertising his stuff to be sold—sometimes selling something. I could hear a little once in a while, he owed Tom, Dick and Harry. You asked me the question, "he paid the taxes all the time in his own name, I answered, No, sir, I haven't the least idea in the world—— You asked me, "you would not undertake to say that he didn't," and I answered "I couldn't say that, because I don't know, but I will swear positively that I paid it every dollar. I returned it for county taxes, and I don't know whether he did or not, if he did I don't know it.

Q. Now, this conversation that you say you had with your children about this property, you say you told them, "well he is making these improvements, but he is improving my property, you never told M. C. Coleman that?

A. No sir, I don't remember that I ever did. You know his children, they will grumble. When a girl gets a dress and the other one don't get any, they will growl about it. Well, that ran along on that order.

Q. Yes, but when you give a daughter a dress and she gets a piece of some fine lace and fixes it up, you don't take it back from her?

A. No sir, I aint got any use for it. If I give him a piece
59 of land and make him a deed to it I don't take it back. If I make a bad trade I—I would not do it if I could. He would not have anything to say about that. I turned over to one of my other children a piece of land consenting for him to live there as long as I live, and then he will come in equally with the others. He has improved that piece of land. I built him a house furnished some wire and mules and horses there to do work clearing up some more land, same body of land. You let him get in debt to you and try to take that land and I will object.

Q. But the place is for his use as long as he does not get into debt?

A. As far as I know now. Some circumstances might come along—might want to sell the property or dispose of it in some other way. If I do I consider that I have got the right to do it at any time, and he would not object. If I would tell him to get another piece of land, got to do something else with that, he would pull up and go and never grumble at all. I don't have an idea that he would say narry word.

You asked me, "Well, now, when your son was in possession of the place you had surveyed off for him, you say you didn't go over there; you didn't keep up with what was going on over there?" Answer. "No sir, there is part of that land I never seen in my life, I don't reckon." A. Part of it I ain't seen yet, I don't know where the lines is. I looked for that survey, the original survey that I have testified about, that Gillis made. I thought I knowed when the call was first made where I could go and get it. I hunted for it more than once. But I am perfectly satisfied that Gillis plat that he brought in here is just about correct. Gillis, I know him; he is a mighty nice man. He don't know nothing crooked; I don't have any idea. I had the survey, and he made it out after we surveyed the land, and sent it to me in the mail, and I put it away in a pigeon hole in the desk. When the call was made, I thought I could go and put my hands on it, but when I went there it was gone. Some of the children I imagine pulled it out and destroyed it. I am satisfied that Gillis's paper is just about correct. I don't know whether the Wrightsville R. R. goes through some of my land not in question in this case or not. I don't know whether it touches my land. I don't reckon it does outside of that tract. I have got some other lands around there, I have got 1000 acres left. I think
60 I can state positively that that railroad did not go through some of my land that adjoins this land in controversy, but I am not sure.

Q. It might go through there?

A. There is another tract of land right below there, but I don't really know where the railroad does go below that farm, I have never been in there. I don't think it touches any other land but this land in dispute. I would not say positively, but I am satisfied

it don't. I have got a place below this one, 100 acres and 90 acres I think. I don't know where it is. I have been down there to locate the line, but never found it, never got any plan.

Redirect:

Q. The question was asked you, if you gave your daughter a dress, would you take it away from her. If you had in fact ever given this piece of land to M. C. Coleman, would you try to take it away from him? I ask you, if you ever gave him this place would you try to take it away from him?

A. Well, if the thing had went on in the shape that it was in, and Math getting further and further in debt to me, I would have been obliged to take it over to get something out of it. If I had given it to him, I could not have done it. I did not give it to him.

Q. Did he know you never gave it to him?

A. He knows I never gave it to him. I did not tell him that I had never given it to him, but I never told him I did give it to him. When I went there and tried to sell it to him, I told him I would not make him a deed to it—— "I cannot do that now—I have studied about it until I have just decided that I cannot equalize the thing with you all, and that I won't do it."

What I meant by not making him a deed, was that if he wanted to he could go there and take the land and work it and make a living, it was all right. It was not to be his. I have heard of no claim that I consented to at all, not my intention. Between 1903 or '4 and that the last two or three years I bought a lot of land, but I cannot tell the dates.

Q. Any increase in the number of acres returned in the last two or three years?

A. I bought 300 acres of land in 1914, I reckon now——. I bought from L. A. Price, bought the Sol Kersey estate. Since 1914, I bought this 50 acres from Flanders. I don't remember any now outside of that. I bought 15 acres the other day, one day
61 last week, I reckon. This particular piece or tract, that is in dispute, has always been given in by me. I suppose my tax returns increased as to acreage in the last few years. When I buy a tract—I buy land very often. Whenever I have a dollar, I put it in land, have always done it.

Q. The question I want you to answer is this; has your number of acres increased because this land has been added to it, or was——

A. No sir, that land has been in my taxes always. My father gave me that land, all except the Moore tract and the Stewart tract, and the Stewart tract was not attached, that is, was not at that time, but I attached it I think after I bought that 50 acres.

Q. Did I represent you at the time Mr. M. C. Coleman went into bankruptcy?

A. Why, I never had a case, Colonel in my life. I told Saussy when I went on the stand over yonder that he ought to be easy with me, as that was the first time I was ever on that stand in my life. I never have been in the courts and you are witness to it; you have

been up there, and you never saw me in the Court House in your life, in any case. You were not employed by me to represent me in this case at the time M. C. Coleman, my son went into bankruptcy, I never thought about this thing. It was before we come down here last year, whenever it was, You all know that you were first employed to represent me in this matter. I had never in my life discussed with you my interest in this piece of land or any other piece of land, because I never had any cause to.

Q. Day or two before we came to Savannah?

A. I was going then—I like to have been to Bradley before I found you, to get him to come down here with me when they were to try it, but I talked to somebody that told me Bradley represented the other side. You never represented me up to this time. You represented John C. Hall, drew up deed to saw mill in the bankruptcy case, but the land belonged to me at the time, and I got you to straighten out the papers and get it through the bankrupt court—all you did for me in court that I know of. I will give the Court the reason for not giving the land to M. C. Coleman. I could not see how I could equalize the matter with my children if I had
62 done that, if I gave him that land and made him title to it. That is the view I took of it. I never thought of this part when we surveyed it, but after surveying it it kept on my mind that it was too much to allow any one, and I talked to my wife about it, that it would not do, that we could not do that; I am satisfied, right in the same identical shape today, with them all. I give him nothing—make him title to nothing, but he takes that land to work and improve is and make a living. I helped the boy over there, I built his house for him and furnished a lot of wire and mules—tried to help him—and I done the same thing with this one.

Q. When you received the rent notes, did you get any part of the 50 acres of land owned by him individually?

A. I owned that all in there when he bought the 50 acres of land. I owned all around there. I wanted it myself and thought he ought to let it alone; but he went and bought it himself, and I didn't have no objection—never said anything, but I wanted the 50 acres of land myself. I cannot tell when he bought the 50 acres, but it was right at the commencement of the thing, you know.

M. C. COLEMAN, recalled by the complainant.

In 1915 before I went into bankruptcy, I owned a 50 acre tract of land; I owned a town lot in Swainsboro, and I owned an equity in the Durden place, the Durden place had 340 acres. That is all the land I owned. All I gave in for taxes, 390 acres.

Witness identifies signature. That is all the land I owned in 1914.

Q. I notice on this statement here that you said you had 650 acres.

A. Well, it should have been 390 acres. I had an equity in 340 acres in the Durden tract and 50 acres on the other place.

Q. But in this credit statement that you made in your handwrit-

ing, you said "Real Estate, 650 acres, at $30.00 per acre, $19,500. That is credit statement you made?

A. Yes sir, let me see that signature (Witness shown paper.) That has United States stamp of Norristown, Jany. 17th, 1914. On the envelope, yes sir. The signature resembles mine, to the best of my knowledge and belief, I suppose it is.

63 The following writing was offered in evidence.

Statement Made to the Credit Clearing House by M. C. Colman, of the Firm of M. C. Coleman, Town of Norristown, Ga., Dated Jan. 15, 1914.

Assets:

Merchandise at present cash value		$2,500.00
Accounts and notes which are good, none.		
Real Estate consisting of land 650 acres at $30.00		$19,500.00
Other assets consisting of mules and machinery		5,000.00
		$26,000.00
Liabilities, owing for merchandise	$250.00	
Owing for borrowed money, to whom, Banks	1760.00	
Mortgage on real estate J. A. Coleman	6200.00	
Other liabilities consisting of notes	1000.00	
	$9100.00	

The above is a full and correct statement of my (our) financial condition and is made to form a basis for credit with the Associate members of the Credit Clearing House, Signed Jany. 15, 1914. By M. C. Coleman, Member of firm.

Envelope stamped with U. S. 2 cent postage stamp, and Post Office stamp on face thereof, Norristown, Ga., Jany. 17, A. M. 1914.

Cross-examination of M. C. Coleman:

I don't remember that I did ever make a statement to obtain credit in which I put down ownership of 600 acres of land, or 690. This writing 650 acres—looks very much like my signature, but I don't remember making that statement. This writing at the top, it all favors my handwriting. All looks like my handwriting. At that date I did not own 650 acres of land.

It was admitted as a fact that M. C. Coleman has not applied for a discharge in bankruptcy, and that the time has expired within which application could be filed.

OTIS COLEMAN, witness for the respondent testified.

64 I have had the use of some land that originally belonged to my father. The conditions and terms under which I got possession were, when I married he gave me a place and told me to go there and stay on it, and of course, when he called for it, it was his. He never gave me any deeds to it, just told me to go there and make a living.

Cross-examination:

E. J. Coleman, is my father, and he is the father of M. C. Coleman. He has 11 children living, and had 11 I think in 1902. I cannot tell you about how many thousand acres of land he owns in Emanuel County. I think three or four thousand acres.

Q. Owned about that many in 1902?

A. Bought some since 1902. I am 33 years old. Married 11 years. I reside in Emanuel County. My father is reputed to be one of the largest land owners in Emanuel County, I guess so, I reckon he is.

AUSTIN P. H. MULLARKY, witness for Complainant, testified.

I occupy a position with D. J. Morrison & Sons Co., a creditor of M. C. Coleman, that creditor is now an unpaid creditor with proven claim in bankrupt-. I was clerk. The firm of D. J. Morrison & Co., extended credit, the credit which is now unpaid, upon the faith and credit of that statement (Referring to the credit statement made by M. C. Coleman hereinbefore in evidence.)

E. J. COLEMAN, respondent re-called, testified.

At the time this 50 acres was sold and I bought it, nothing was said about the rent. I did not collect one of the $1000 notes before that sale. I don't know whether it was before or afterwards, I don't know when that sale was, but I think it was in the latter part of 1914 or 1915, one. I reckon it might have been in 1915, I don't know. I have always expected when it come that I would have to give up the rent of that 50 acres. I always felt that was theirs. But it never has been demanded. I don't think I ever heard rent mentioned on it, only what I have said to you.

Q. I am talking about rent accrued subsequent to adjudication and up to the time of the same.

A. I want to put you on notice, I am not willing to pay rent over what it is worth, but if you will send some parties not interested and estimate it—I will not pay $135.00 until I am made to do it; it is too much. I am except that land was sold in the fall of 1915,

65 but I am not certain. I never tendered any rent to the trustee, I don't think it has ever been mentioned. I did not offer to pay it in my answer to this bill. I think that other party was the one to call for it. He was the boss, and I bought it, and he made out my title. Never was mentioned.

It is agreed that the 50 acres of land owned by M. C. Coleman sold November 9th, 1915, by the trustee and bought in by E. J. Coleman. The rent due is for 1915, one year on 50 acres.

It is also agreed that M. C. Coleman testified in the bankruptcy proceeding that he was 36 years old in 1915.

J. H. ROWLAND, witness for the Respondent, testified:

I know the two Colemans, I do not know the other party. I went to see Mr. Math Coleman dealing with getting a right of way for a railroad through Emanuel County, it was for the Adrian & Lyons Railroad. It was in the early part of 1911 I went to see Mr. Math Coleman. As to what was said while I was at Mr. Math Coleman's I do not recollect it all, but one thing I do remember about it is that we took dinner with Math Coleman and he told us we would have to go and see his father and get his consent. After he made that statement to me I took dinner with him and went to see Mr. Baum Coleman after dinner.

Q. That is E. J. Coleman?

A. I do not know. I only know him as Mr. Baum Coleman. Admitted that he is the same as E. J. Coleman. I think that is all I remember; that we went to Mr. Math Coleman's and took dinner and went to see Mr. Baum Coleman after dinner and took the matter up with him.

Cross-examination:

It was either 1910 or 1911 the early part of 1911 I went to see M. C. Coleman. I did not get a deed to the right of way. We never did get a deed to the right of way. There never was a deed, Mr. Sutton was getting the right of way from Adrian to Lyons and myself and Mr. Sumner were to get the right of way from Adrian to Wrightsville. There seemed to be some difference with Mr.
66 Stanton and Mr. Coleman. Mr. Coleman demanded more money than they would agree to give and Steve Sumner was a relative of Mr. Coleman and he took the matter up with Mr. Sumner and got me to go there with him to see Mr. Coleman relative to this difference. If they ever got the deed, I do not remember. I could not say through what tract of land it was I wanted to go. I do not know anything about whether it was a large tract or a small tract. It was below Gill Spring, as to its size I don't know. I do not remember whether this railroad was ever built across said land of M. C. Coleman's or not. It was never built below Gillis Spring. I understood that the land through which I wanted to put the right of way belonged to M. C. Coleman. We went to see him and he sent us to see his father in reference to it, and we went to see him.

E. J. SUMNER, witness for the respondent testified as follows:

I know the two Mr. Coleman, I do not know the other party to the above stated suit. I went to see Mr. Math Coleman as to getting a right of way for a railroad through Emanuel County, it was for

the Adrian and Lyons Railroad. It was in the early part of 1911. I went to see Mr. Math Coleman. I do not recollect all as to what was said, but one thing I do remember about is that we took dinner with Mr. Math Coleman and he told us we would have to go and see his father and get his consent. We took dinner after that with Math Coleman and went to see his father who is E. J. Coleman. I think that is all I remember, that we went to Mr. Math Coleman and took dinner and went to Mr. Baum (E. J.) Coleman's after dinner and took the matter up with him.

Cross-examination:

I am not positive. It was either 1910 or 1911, the early part of 1911. I did not get a deed to the right or way. No we never did get a deed to the right of way. There never was a deed. Mr. Sutton was getting the right of way from Adrian to Lyons and myself and Mr. Rowland were to get the right of way from Adrian to Wrightsville. There seemed to be some difference with Mr. Stanton and Mr. Coleman. Mr. Coleman demanded more money than they would agree to give and Steve Sumner was a relative of Mr. Cole-
67 man and he took the matter up with me relative to this difference and got Mr. Rowland to go there with me. I do not remember whether they ever got a deed. I do not remember if they ever got it. I could not say through what tract they wanted to go. I do not know anything about whether it was a large tract or a small tract. It was below Gillis Spring. As to its size I do not know.

As a matter of fact, I do not remember whether this railroad was ever built across said land of M. C. Coleman or not. It was never built below Gillis Spring. The right of way was never graded below Gillis Spring. I understood that the land through which I wanted to get the right of way belonged to Mr. M. C. Coleman, we went to see him and he sent us to see his father in reference to it, and we went to see him.

Approved as a summary of the evidence, March 29th, 1918.

BEVERLY D. EVANS, *U. S. Judge.*

Endorsement: Condensed statement of the evidence. Filed in office March 29, 1918. Florence White, Deputy Clerk.

68 In the District Court of the United States for the Southern District of Georgia, Eastern Division.

In Equity.

R. A. FLANDERS, Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

BEVERLY D. EVANS, *District Judge:*

This is a suit in equity by the bankrupt's trustee against an adverse claimant to recover a tract of land, and certain notes given by the tenant for the rent of it. The jurisdiction of the court is invoked under sections 60*b*, 67*e* and 70*e* of the bankruptcy act as amended. The general scope of the bill is to the effect that many years prior to the bankruptcy, the father of the bankrupt, who is the defendant, made a parol gift of the land to the bankrupt, who entered into possession of the land, made valuable and permanent improvements thereon on the faith of the gift, and that under the laws of Georgia, the bankrupt became vested with a complete title thereto. About a year prior to the bankruptcy the bankrupt made a parol lease of the premises for five years, taking five notes payable to himself or bearer, maturing annually for the rent of the land. Within four months of the filing of the petition to be adjudicated a bankrupt, the bankrupt, while insolvent, surrendered possession of and control over the land, and delivered four of the rent notes to the defendant (the other having been previously hypothecated to a bank) with intent, as alleged, to hinder, delay and defraud his creditors. The defendant denied that he made any gift of the land as alleged to his son, the bankrupt and averred that the land belonged to him and never belonged to his son, and that his son's possession was permissive and by virtue of his consent that he might have the use of the land, and that the son's possession was his possession, and that the rent notes, although taken in the name of the son or bearer, were his notes. The defendant also pleaded to the jurisdiction of the court.

69 The matter was referred to a master, who filed a report advising a judgment in favor of the trustee for the recovery of the land and of a stated sum collected from two rent notes, and also for the unpaid notes which had not matured. Exceptions are filed to the master's report.

The exception that the order of reference to the master is void under Equity Rule 59 is without merit. The rule does not prohibit a reference of an equity cause to a master. It declares, "Save in matters of account a reference to a master should be the exception, not the rule, and shall be made only upon a showing that some exceptional condition requires it." It is to be presumed that the judge properly exercised his discretion in making the reference, and if either party desired to controvert the propriety of the reference the

proper practice would be to move before the judge for a revocation of the reference. The failure to make such motion is tantamount to acquiescence, and the point can not be initially raised before the master.

The conflict in evidence before the master revolved around the factum of a parol gift. The trustee submitted evidence tending to show circumstances from which a parol gift of the land might be inferred, while that of the defendant was to the point that he had permitted the bankrupt to use the land, and that no gift of it had been made. The evidence further disclosed that the bankrupt made a parol lease of the land for five years, taking five notes, payable to himself or bearer, and that within four months before the filing of the petition he delivered four of the notes to the defendant, having previously used one of them. The bankrupt and the defendant denied that a parol gift of the land had been made, and insisted that the bankrupt's possession was by permission and with the consent of the defendant. Under these circumstances, the question is presented as to the jurisdiction of the District Court to entertain the suit.

The Bankruptcy Act, as amended by the Act of 1910, declares that "Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant, except suits for the recovery of property under Section Sixty, sub-division *b*; section Sixty-seven, sub-division *e*; and section Seventy, sub-division *e*." Bankruptcy Act, section 23, sub-division *b*.

Sub-division *b* of section 60 makes provision for the recovery of preferences given by the bankrupt within four months before the filing of the petition in bankruptcy.

Sub-division *e* of section 67 makes provision for setting aside fraudulent conveyances, and the recovery of the property so conveyed at the suit of the trustee.

Sub-division *e* of the section 70 provides that a trustee may avoid any transfer by the bankrupt which any creditor might have avoided, and may recover the property so transferred, or its value, from any person, except a bona fide purchaser for value.

The bankrupt did not create or undertake to create a preference, nor did he execute a conveyance; so that, the record does not bring the transaction within the operation of section 60 *b*, or section 67 *e*.

Section 70 *e* relates to the avoidance of transfers by the bankrupt, voidable at the instance of creditors, and the recovery of the property so transferred or its value. I construe this section to limit actions to cases where the defendant is alleged to claim title, and its consequent advantages, under the bankrupt by virtue of a transfer from him. I do not think that the transaction as disclosed by the evidence, viewed either from the aspect of the trustee or the defendant, shows any transfer by the bankrupt of the land. Evidence favorable to the trustee's contention that the defendant had made a gift of the land to the bankrupt goes no farther than the parties now

eny that a gift ever was made. If there was a gift of the land, the tle still is in the bankrupt, and he has made no transfer of it hich a court of equity may cancel. The trustee's remedy is by suit n the proper State court to recover the land. Bardes v. Hawarden ank, 178 U. S. 524; Harris trustee, v. First National Bank of Mt. Pleasant, 216 U. S. 382; Newcomb v. Biwer, 199 Fed. 529.

1 The rent notes represent the mesne profits or issues of the land, and their ownership and right of possession to same, nder the facts, would follow the ownership of the land.

With respect to the rent notes, this feature, not disclosed by the leadings, appears in the evidence. The notes were given for a body f land, which included a small tract of 50 acres, which belonged to he bankrupt. This 50 acre tract went into the possession of the rustee, and there is no contest over its ownership. The defendant makes no claim to so much of the rent notes as equitably represents the rent of the 50 acre tract, and offers to account for same. Under the special facts of the case, I think that upon the defendant's accounting for the rent of the 50 acre tract, the action should be dismissed without prejudice to the right of the trustee to institute a suit in the State court to recover the land and mesne profits. According-, if the trustee and the defendant can agree on the amount, upon the payment of the same, the action will be dismissed in this court without prejudice. If payment be not made, then so much of the action as relates to the recovery of the notes be retained, so as to permit a recovery of the amount of rent of the 50 acre tract. Let an order be prepared to this effect. This March 15th, 1918.

BEVERLY D. EVANS, *Judge.*

Endorsement: Opinion of the Court. Filed in office March 16, 1918. J. C. Morcock, Deputy Clerk.

72 In the District Court of the United States for the Southern District of Georgia, Eastern Division.

R. A. FLANDERS, as Trustee of M. C. Coleman, Bankrupt,

v.

E. J. COLEMAN.

Final Decree.

This court having considered the report of the special master in this cause, and having heretofore filed opinion in this cause, and the said cause, appearing to be one in which this court has no jurisdiction of the subject matter, assuming for the purpose of the consideration of such question of jurisdiction, the testimony submitted by the complainant to be true, this court without a decision on the merits of the controversy, herewith orders and directs that the said bill of complaint be and the same is hereby dismissed, without prejudice to the complainant's right to maintain his action in the State

court. The report of the master in this cause finding in favor of the complainant on the question of jurisdiction, and on the merits, is hereby overruled because of the fact that this court is without jurisdiction of the subject matter of said controversy.

The compensation of the special master will be fixed hereafter, and it is ordered that complainant pay the costs.

In open Court this 25th day of March, A. D., 1918.

BEVERLY D. EVANS,
United States Judge.

Endorsement: Final Decree. Filed in office March 25th, 1918. J. C. Morcock, Deputy Clerk.

73 In the U. S. District Court, Southern District of Georgia, Eastern Division.

R. A. FLANDERS, Trustee of M. C. Coleman,

vs.

E. J. COLEMAN.

We agree that the master's report be eliminated from the appeal papers in this case. That the said report of the Master found in favor of the complainant, on the facts, and that complainant should have the relief prayed for, and accounting. And that he also found in favor of the jurisdiction of the Court. The respondent duly excepted to the said report on all grounds of findings of the master. That the said exceptions be not made a part of the appeal papers.

This 25th day of March, A. D., 1918.

F. T. SAUSSY,
Counsel for Complainant.
F. H. SAFFOLD,
Counsel for Respondent.

Endorsement: Stipulation as to Master's report and exceptions thereto on appeal. Filed in office March 29th, 1918. Florence White, Deputy Clerk.

74 In the United States District Court, Southern District of Georgia, Eastern Division.

R. A. FLANDERS, Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

To Frank H. Saffold, Esq., Counsel for E. J. Coleman, Respondent:

You are hereby notified that the above named R. A. Flanders as trustee of M. C. Coleman bankrupt, intends to appeal to the Supreme Court of the United States, from the final decree in said cause ren-

dered on the 25th day of March, A. D. 1918, such appeal to be made in open court during the present February Term of said Court, or within the time allowed by law.

March 26th, A. D. 1918.

WILLIAMS & BRADLEY,
SAUSSY & SAUSSY,
Counsel for Complainant.

Service of above notice acknowledged, copy received. Citation on appeal waived.

F. H. SAFFOLD,
Counsel for E. J. Coleman, Respondent.

P. O. Swainsboro, Ga.

Endorsement: Notice of intention to appeal. Filed in office March 29th, 1918. Florence White, Deputy Clerk.

75 In the United States District Court, Southern District of Georgia, Eastern Division.

In Equity.

R. A. FLANDERS, as Trustee in Bankruptcy of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

R. A. Flanders, as trustee in bankruptcy of M. C. Coleman, bankrupt, conceiving himself aggrieved by the final decree made and entered in the above entitled cause on the 25th day of March, 1918, does hereby appeal from the said final order, judgment and decree of the said District Court of the United States for the Southern District of Georgia to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herewith and prays that this, his appeal may be allowed, and that a transcript of the record, proceedings and papers upon which the said final judgment, order and decree was made which dismissed the said cause for want of jurisdiction, duly authenticated may be sent to the Supreme Court of the United States.

Dated the 29th day of March, A. D. 1918.

FREDERICK T. SAUSSY,
SAUSSY & SAUSSY,
A. S. BRADLEY,
Counsel for R. A. Flanders, as Trustee of M. C. Coleman, Bankrupt.

The foregoing claim of appeal to the Supreme Court of the United States is allowed; in open court, and at and during the term in which the final decree appealed from was rendered.

It is further ordered that the evidence and such portions of the transcript as are specified in the Præcipe of the appellant in this cause be sent to the Supreme Court of the United States, under the seal of this Court by the Clerk of this Court, and as this appeal is made by a Trustee in Bankruptcy, it is ordered that he shall not be required to give bond on such appeal.

Dated at Savannah, Georgia, this 29th day of March, 1918. In open Court.

BEVERLY D. EVANS,
United States District Judge for the Southern District of Georgia.

76 Endorsement: Appeal to Supreme Court of United States and allowance thereof. Filed in office March 29th, 1918. Florence White, Deputy Clerk.

77 UNITED STATES OF AMERICA,
Southern District of Georgia:

The President of the United States of America to E. J. Coleman, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the District Court of the United States for the Southern District of Georgia, and filed in the Clerk's office of the said District Court on the 29th day of March, 1918, in a cause, in which R. A. Flanders as trustee of M. C. Coleman is appellant, and you E. J. Coleman are appellee, to show cause, if any, why the decree, order and judgment rendered against the said appellant, and in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States of America, this the 29th day of March, A. D. 1918.

BEVERLY D. EVANS,
Judge of the United States District Court, Southern District of Georgia.

Due and legal service of the within citation is hereby acknowledged and admitted, this 29th day of March, A. D. 1918, citation waived.

F. H. SAFFOLD,
Attorney E. J. Coleman, Respondent.

Endorsement: Citation on Appeal. Filed in office March 29, 1918. Florence White, Deputy Clerk.

78 Pending in the United States Supreme Court, October Term, 1917.

R. A. FLANDERS, as Trustee in Bankruptcy of M. C. Coleman,

vs.

E. J. COLEMAN.

Waiver of Citation on Appeal.

E. J. Coleman, the appellee in the above entitled cause, does hereby formally waive citation on appeal to the Supreme Court of the United States, in the above stated cause.

F. H. SAFFOLD,
Counsel for E. J. Coleman.

This 1st day of April, A. D. 1918.

Endorsement: Waiver of Citation on Appeal, filed in office April 3rd, 1918. Florence White, Deputy Clerk.

79 In the United States District Court, Southern District of Georgia, Eastern Division.

R. A. FLANDERS, Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

R. A. Flanders, Trustee of M. C. Coleman, Bankrupt, the appellant herein prays an appeal from the final decree of this Court to the Supreme Court of the United States, and in connection with his petition for appeal herein, presents and files herewith his assignments of errors, as to which matters and things he says that the decree entered herein on the 25th day of March, 1918, is erroneous:

First.

That the decree dismissing the said cause of the plaintiff for want of jurisdiction is erroneous, for the Court has jurisdiction to entertain this action, under Sections 60 (*b*), 67 (*e*) and 70 (*e*), of the laws of Congress relating to bankruptcy.

Second.

That the decree dismissing said cause of the plaintiff for want of jurisdiction, is erroneous, for the Court has jurisdiction to grant the relief prayed by the appellant.

Third.

That the decree dismissing the said cause of the plaintiff for want of jurisdiction is erroneous, for the evidence of the plaintiff showed

that in January or February, 1915, or at least within two months prior to May the 8th, 1915, the bankrupt, M. C. Coleman, then owning the land in dispute, made a transfer not only of the said land, but of the rents and profits thereof, then belonging to him, to the respondent, with intent to hinder, delay and defraud his creditors, the said bankrupt being then insolvent, and having been insolvent within the meaning and intent of the laws of Congress relating to bankruptcy since August, 1914, and the effect of such acts and conduct of the bankrupt, and the respondent was and is to hinder delay and defraud the creditors of said bankrupt.

Fourth.

That the decree dismissing the said cause of the plaintiff for want of jurisdiction is erroneous for the bankrupt, M. C. Coleman,
80 and the respondent, E. J. Coleman, by their acts and conduct, during the month of January or February, 1915, and at least within two months prior to and immediately preceeding May the 8th, 1915, the date when the bankrupt, M. C. Coleman, filed his voluntary petition in bankruptcy, did acts, in relation to the land in dispute, which in law amount to a transfer of property and the possession of property of said M. C. Coleman by the said M. C. Coleman, while he, the said M. C. Coleman was insolvent within the intent and meaning of the laws of Congress relating to bankruptcy, to the said E. J. Coleman, with intent to hinder, delay and defraud the creditors of M. C. Coleman, namely, by transferring the rent notes and lease for the remaining four years, covering the real estate in dispute, to the said E. J. Coleman, and the assumption by E. J. Coleman of a proprietary claim to the said real estate, and to the rent notes and leasehold thereof; by virtue of such acts of said Bankrupt, and the taking possession of the said real estate by E. J. Coleman under such transfer of the said M. C. Coleman, and the improvements of the said real estate made by the said E. J. Coleman after such transfer, and by the fraudulent disclaimer by the bankrupt then and there to the said E. J. Coleman of any right, title, interest or claim in and to the said Property, and to the possession of such property the said leasehold then held by him, and to the rents and profits thereof, and by passing the possession of the said real estate from said M. C. Coleman to the respondent, E. J. Coleman, with such intent and purpose on the part of the said M. C. Coleman, to hinder, delay and defraud his creditors.

Fifth.

That the decree dismissing the case for want of jurisdiction of the court is erroneous, for the said District Court of the United States, for the Southern District of Georgia, has jurisdiction to entertain the cause of the complainant against the respondent and to grant full and complete relief, and require restitution to be made of the possession of the property in dispute, and an accounting for

the rents, issues and profits thereof, and for such other general relief as the complainant prays for in his bill.

81 Sixth.

The Court erred in dismissing the said bill of complaint for want of jurisdiction, because under the uncontradicted evidence in the said cause, the bankrupt, M. C. Coleman, in January or February, 1915, or at least within two months prior to May 8th, 1915, the date when he filed petition in bankruptcy, transferred to E. J. Coleman, property, to-wit: The leasehold then and there held by the said M. C. Coleman under a rental contract made by M. C. Coleman with Dan Davis, his tenant, amounting *in* the sum of $4,000.00 in value, and which the said E. J. Coleman then and there accepted, assumed control of, and thereafter collected such rents by virtue of being the holder of such rent notes, and thereafter *has* the said tenant, Dan Davis, to attorn to him the said E. J. Coleman, and thereafter and prior to filing of the bill in this cause, took charge of and possession of the said premises, claiming to be proprietary owner thereof.

Wherefore, for these errors, petitioner and appellant prays that the judgment and decree of this Court in this case be reviewed and reversed, solely on the ground of jurisdiction and that alone, and the cause be remanded to the effect that the Court consider, pass upon and adjudge the said cause on the merits thereof.

F. T. SAUSSY,
WILLIAMS & BRADLEY,
Attorneys at Law for R. A. Flanders, Trustee in Bankruptcy of M. C. Coleman, Bankrupt.

Presented this 29th day of March, 1918.
BEVERLY D. EVANS,
United States Judge.

Endorsement: Assignment of errors on appeal. Filed in office March 29, 1918. Florence White, Deputy Clerk.

82 In the United States District Court, Southern District of Georgia, Eastern Division.

In Equity.

R. A. FLANDERS, as Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

Certificate as to Jurisdictional Question.

In the above cause, I do certify that the decree of dismissal herein is based solely upon the ground that the Court is of opinion that

the Court has no jurisdiction to grant any relief to the complainant; In reaching this determination I have considered the evidence solely to determine whether jurisdiction of the subject matter of the controversy exists in this court, and the evidence of the complainant (assuming it to be true for that purpose only), does not show such a transfer within the meaning of the laws of Congress relating to Bankruptcy, and to the United States Court's jurisdiction in the matter of Plenary proceedings by the trustee in bankruptcy to recover or reclaim property of the bankrupt transferred.

This certificate is made in conformity with the act of Congress of March 3rd, 1891, so that the same may be certified and sent up as a part of the record and proceedings, in said cause.

Dated the 25th day of March, A. D. 1918.

BEVERLY D. EVANS,
United States District Judge for the Southern District of Georgia.

Endorsement: Judge's certificate as to Jurisdictional question. Filed in office March 25, 1918. J. C. Morcock, Deputy Clerk.

83 In the United States District Court, Southern District of Georgia, Eastern Division.

In Equity.

R. A. FLANDERS, Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

Præcipe Indicating Portions of Record to be Included in the Transcript on Appeal.

The Complainant herewith specifies the following portions of the record to be incorporated in the transcript on appeal in the above cause to the Supreme Court of the United States:

1. The original bill of complaint of the complainant.
2. The amendment to the original bill of complaint filed and allowed December 6th, 1916.
3. The answer and plea to jurisdiction of the respondent filed December 2nd, 1916.
4. The summary, and condensed statement of the testimony.
5. The opinion of the Court.
6. The final decree.
7. The stipulation of counsel as to parts of Master's report to be sent as a part of the record.
8. All appeal papers, including petition for appeal, and order thereon, citation on appeal and service thereof, assignments of errors filed with petition for appeal, and all other appeal papers.

SAUSSY & SAUSSY,
WILLIAMS & BRADLEY,
Attorneys for Complainant.

Service acknowledged, copy received. Notice of intention to appeal to Supreme Court of the United States received. Citation on appeal waived. This 29th day of March, 1918.

F. H. SAFFOLD,
Counsel for E. J. Coleman, Respondent.

Approved and ordered that the Clerk transmit the above record to Supreme Court.

BEVERLY D. EVANS,
U. S. Judge.

Endorsement: Præcipe for Record on appeal. Filed in office March 30th, 1918. J. C. Morcock, Deputy Clerk.

84 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Southern District of Georgia:

I, L. M. Erwin, Clerk of the United States District Court for the Southern District of Georgia, do hereby certify that the foregoing writing annexed to this certificate is a true, correct and complete transcript of the record as directed by Law to be made, and copies of the proofs of such entries and papers on file as may be necessary in the hearing in the Appeal in the Equity Cause of R. A. Flanders as trustee of M. C. Coleman, Appellant, versus E. J. Coleman, Appellee, lately pending in said Court and appealed by R. A. Flanders, Trustee to the Supreme Court of the United States, as the same remains of file and record in my office.

In witness whereof, I have hereunto set my hand, and affixed the seal of said District Court, at Savannah, Georgia, this seventeenth day of April, A. D., 1918.

[Seal U. S. District Court, Southern District Georgia.]

L. M. ERWIN, *Clerk,*
By J. C. MORCOCK, *Deputy.*

85 UNITED STATES OF AMERICA,
Southern District of Georgia:

The President of the United States of America to E. J. Coleman, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the District Court of the United States for the Southern District of Georgia, and filed in the Clerk's office of the said District Court on the 29th day of March 1918, in a cause, in which R. A.

Flanders as trustee of M. C. Coleman is appellant, and you, E. J. Coleman are appellee, to show cause, if any, why the decree, order and judgment rendered against the said appellant, and in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States of America, this the 29 day of March, A. D. 1918.

BEVERLY D. EVANS,
Judge of the United States District Court, Southern District of Georgia.

Due and legal service of the within citation is hereby acknowledged and admitted, this 29 day of March A. D. 1918, citation waived.

F. H. SAFFOLD,
Att'y E. J. Coleman, Respondent.

86 [Endorsed:] No. 43. Eq. United States Dist. Court Southern Dist. Ga. R. A. Flanders, Trustee of M. C. Coleman, Bankrupt, v. E. J. Coleman. (10.) Citation on Appeal. Saussy & Saussy, Attorneys and Counsellors at Law, Office and P. O. Address, Savannah, Georgia. Filed in Office Mar. 29, 1918, Florence White, Deputy Clerk.

Endorsed on cover: File No. 26451. S. Georgia D. C. U. S. Term No. 984. R. A. Flanders, as Trustee of M. C. Coleman, Appellant, vs. E. J. Coleman. Filed April 19th, 1918. File No. 26451.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918

R. A. Flanders, Trustee of M. C. Coleman, Bankrupt,

Appellant,

vs.

Elisha J. Coleman,

Appellee

No. 984

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF GEORGIA

MOTION BY R. A. FLANDERS, TRUSTEE OF M. C. COLEMAN, APPELLANT, TO PLACE ON THE SUMMARY DOCKET

Comes now the Appellant, R. A. Flanders, Trustee of M. C. Coleman, bankrupt, and respectfully moves the Court to place the above entitled cause on the summary docket.

STATEMENT

R. A. Flanders, Trustee of M. C. Coleman, bankrupt, filed a bill in the District Court of the United States, Southern

District of Georgia, against Elisha J. Coleman, adverse claimant of certain realty. The purpose of the bill was to require restitution of the possession of certain real property and the abiding by the decree of the Court sought, ordering the respondent to convey the paper title to the property to the Trustee, the legal title to the land being vested in the bankrupt.

It was alleged by the complainant Trustee, that in 1902 the respondent, then owner of the land, gave it to his son, M. C. Coleman, verbally, and the latter entered into possession and continued this possession by himself and tenants until 1915, and until two months prior to the filing of his voluntary bankruptcy proceedings, expending large sums in permanent improvements and obtaining credit on representations that the land was his. Two months prior to filing such bankruptcy proceedings, M. C. Coleman, while insolvent and with intent to hinder, delay and defraud his creditors, transferred by delivery, four rent notes made by Dan Davis, his tenant, evidencing the rents of this land then owned by him, maturing October 1915, 1916, 1917, 1918, for the sum of $1,000.00 each, payable to M. C. Coleman, landlord, or bearer, unto Elisha J. Coleman, the respondent, and that the said M. C. Coleman then and there orally disclaimed title to the land and to the rents thereof, and respondent assumed possession of the land and denied the Trustee's right to the same.

The Georgia statute provides that seven years exclusive possession of land formerly belonging to the father, without payment of rent, and without exercise of dominion over the land by the father, and without disclaimer by the child **shall convey title to the child,**—and conclusively presumes a gift. Georgia Code 1910, Sec. 4151.

The case was fully considered, evidence having been submitted on the merits, and the lower court held that as no formal conveyance of title by deed was made by M. C. Coleman to E. J. Coleman, that the lower court was without

jurisdiction to grant any relief to the complainant, and dismissed the bill without prejudice to the right of the complainant to institute suit in the proper State court.

The complainant appealed directly to this Court on the jurisdictional question alone.

The Bankruptcy Act, Sec. 1, sub-section 25, defines a transfer, as every mode of parting with property or the possession of property. And Sections 67-e, and 70-e, of the Bankruptcy Act confer jurisdiction on the District Court of an action by a Trustee in bankruptcy to set aside any transfer by a bankrupt made with intent to hinder, delay or defraud creditors, or any transfer by bankrupt which creditors under the State law may avoid, and to recover the property so transferred.

It is submitted that the question involved is solely the construction of a statute, that is whether the surrender of the possession of real estate by a debtor to a third person within four months immediately preceding the filing of his bankruptcy proceedings, and the assumption of possession by such third person with the intent to withhold the possession against the rights of creditors of the debtor and to hinder, delay and defraud them constitutes such a transfer as would vest jurisdiction in the Federal Court to grant relief to the Trustee, and is a question which would not require extended argument.

For the above reasons the case should be placed on the summary docket.

Notice of this motion has been served on opposing counsel.

Respectfully submitted,

FREDERICK T. SAUSSY,
A. S. BRADLEY,
Counsel for R. A. Flanders,
Trustee of M. C. Coleman.

January ---, 1919.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

R. A. FLANDERS as Trustee in Bankruptcy of M. A. Coleman, Bankrupt,
Appellant,

vs.

ELISHA JORDAN COLEMAN,
Appellee.

No. 984

APPEAL FROM THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF GEORGIA.

BRIEF OF THE APPELLANT.

I.

SYLLABUS.

The United States District Court has jurisdiction of a plenary proceeding in equity brought by a trustee in bankruptcy against an adverse claimant (the trustee, the bankrupt and the adverse claimant being citizens of the same

State in which the action is filed) to recover four rent notes of the aggregate value of $4,000.00, payable to the bankrupt or bearer, and by him fraudulently transferred to the adverse claimant within four months prior to his bankruptcy, and to recover the land the subject matter of the rent notes, which at the same time was fraudulently disclaimed by the bankrupt in favor of the adverse claimant who had the bankrupt's tenant attorn to him, who collected the rents of the land and otherwise exercised acts of ownership and who resisted the trustee's demand to yield up the same for administration in bankruptcy.

II.

STATEMENT OF THE CASE.

As a general rule title to land in Georgia can be acquired only by writing, "but to this rule there are exceptions." One exception is, after a child is allowed to hold a father's land under certain conditions, for seven years, the law conclusively presumes a gift. Code 2664. And a child or any other donee within the range of a meritorious consideration, may compel the specific performance of a voluntary agreement if possession has been given under the agreement, and the donee has made valuable improvements upon the faith thereof. Code 3189." (These sections refer to Code of 1882).

Harvey vs. West, 87 Ga., 557.

We cite these principles, which may be peculiar to the law of Georgia for they are necessarily involved in the jurisdictional question which is before the Court.

In 1902 or 1903, M. C. Coleman, the bankrupt, married, and at that time his father E. J. Coleman, one of the largest land owners in that county (Record, page 50), the appellee,

placed him in possession of a tract of land partly cultivated, promising to give him the land, and telling him, "he could have it if he took it in." (Record, page 31, bottom of page). By 1905 permanent improvement of a substantial nature had been erected on the land by M. C. Coleman, (Record, page 44, bottom page (p. 45, top page), and in August, 1905, E. J. Coleman had the special tract surveyed by one Gillis, who made a plat of the land with the son's name on the same, and delivered it to E. J. Coleman. E. J. Coleman told the surveyor that the land was for M. C. Coleman. (Record, p. 26, middle of page). The son, M. C. Coleman, continued in the exclusive and uninterrupted possession and enjoyment of this land through himself and tenants until the latter part of January, or in February or at least within two months prior to May the 8th, 1915 (Record, p. 31, bottom of page, Record, p. 33), on which last named date (Record, p. 12) he filed voluntary bankruptcy proceedings in the Federal Court in Georgia, and was promptly adjudged bankrupt. R. A. Flanders the appellant was elected trustee of his estate. (Record, p. 38).

In 1913 M. C. Coleman as landlord and holding out as owner rented this land for five years to Dan Davis taking rent notes payable $1,000.00 per annum. M. C. Coleman states that the transaction which we now allude to took place within two months prior to his bankruptcy. (Record, p. 33, lines 27 and 28). E. J. Coleman says it took place the latter part of January or in February, 1915.

M. C. Coleman according to his own testimony within two months of his bankruptcy, and certainly at least within five months of his bankruptcy, sent to E. J. Coleman four rent notes of the sum of $1,000.00 each, payable respectively October, 1915, October, 1916, October, 1917, and October, 1918, all payable to "M. C. Coleman, landlord or bearer," and all describing the locus in quo as the land thus rented (Record, p. 20), and E. J. Coleman received them and being armed with the same asserted to the tenant, Dan Davis, that

he E. J. Coleman was the owner of the land. Prior to the filing of the bill in this case, E. J. Coleman had collected the 1915 rents and upon being examined in the bankruptcy case claimed that he owned the land and the rents thereof, and would not yield either the land or the rents to the trustee for administration in bankruptcy. He had after the surrender and transfer of the rent notes to him, entered on the land to attend to certain repairs to be made thereon. (Record, p. 44, top 45).

It is important to note that the rent notes were all dated in 1913, and that there were originally five of these notes, and that M. C. Coleman collected the 1914 note and used the same as his own property. (Record, p. 29, line 15 et seq).

M. C. Coleman had held out the land as his to creditors (Record, p. 14, 15, 16, 17), who had become surety for his debts on the faith and representation by him that it was his land. Money was thus obtained from creditors for the avowed purpose of making improvements on the land. M. C. Coleman made a written statement as a basis for credit (Record, p. 49) in which he listed 650 acres of land owned by him, worth $30.00 per acre, and it was necessary to include the acreage of the locus in quo, to estimate that quantity of acres owned by him. The improvements placed by M. C. Coleman on the locus in quo consisted of numerous tenant houses (Record, p. 14, 22), and over five miles of wire fencing. He had cleared and cultivated the land so that in 1915 it was a ten horse farm. The land with the improvements were then worth considerable money. M. C. Coleman admitted that he was hopelessly insolvent ever since August, 1914, the commencement of the European War. (Record, p. 30, line 17).

M. C. Coleman when examined at his creditors meeting in bankruptcy, on oath testified in answer to the question, "Explain all about that land transaction with your father," as follows:

"I WAS JUST MARRIED AND STARTED HOUSEKEEPING AND MOVED ON THIS PLACE, AND THERE WAS SOME LAND OFF IN THE WOODS AND HE TOLD ME THAT IF I COULD TAKE IT IN I COULD HAVE IT. I WENT THERE AND CLEARED IT, CULTIVATED IT, FENCED IT AND CLEARED A TEN HORSE FARM AND I HAVE BEEN GETTING THE RENTS OUT OF IT, BUT I NEVER GOT NO DEED TO IT. BUILT EIGHT OR NINE TENANT HOUSES ON IT." (Record, pp. 31, 32).

When examined on the trial of this case, the testimony of M. C. Coleman shifted (Record p. 32), and he stated that after going upon the land under the above circumstances, thereafter his father told him he couldn't let him have the land and be fair with his other children. He thought this was said by the father a month or two after he had gone there. (Record, p. 32). The appellee, E. J. Coleman, testified that the conversation occurred shortly after the survey made in 1905, "I says, now I will sell it to you at the price land is going at and you can give me a note and if you never pay it, it will stand and bear interest and that will put you on an equality with my other children." (Record, p. 39).

E. J. Coleman makes out a case of a gift, and then a proposed change to advancement. (Record, p. 39).

The son did not accede to this proposition; on the contrary continued to use and improve the property and hold it out as his own, and was building a house for Dan Davis as late as the early part 1914. (Record, p. 23, line 10). The permanent improvements erected by the son were reasonably worth $6,000.00. (Record, p. 14).

While the merits of the cause are not in issue at this time, it is appropriate that the same be referred to incidentally as illustrating the jurisdictional question before the Court. The lower Court did not pass on the merits of

the case, and in deciding that no transfer was shown, he clearly shows that he was dealing with jurisdiction and not with the merits, otherwise he would not have dismissed without prejudice to action by the trustee in the State Court. (Record, bottom p. 55).

In Georgia voluntary conveyances by insolvents are fraudulent in law.

First National Bank vs. Bayless, 96 Ga., 685.

And the relationship of parent and child requires the transaction between them to be closely scanned, when it militates against the interest of creditors.

Hicks vs. Sharp, 89 Ga., 311;
Kelly vs. Simmons, 73 Ga., 716.

The immediate improvements of the locus in quo in 1902-1903 after entry thereon by M. C. Coleman sufficiently shows his acceptance of the gift.

Altgelt vs. Escalero, 110 S. W. Rep., 989.

The many declarations made by M. C. Coleman that the property was his; his borrowing money to improve it from creditors abundantly demonstrated by testimony of unimpeachable witnesses (although the respondent denied the allegation of the complainant to that effect on oath, see answer of respondent par. 9, record, p. 9); his written representation of the number of acres owned by him; his continuance of improvements as late as 1914; his renting out the land as owner; the inconsistency between the testimony of the son and that of the father as to the alleged second arrangement; the fact that the second arrangement was not

acted upon, because the son declined the father's proposal; all of these facts and circumstances indicate clearly that the land was the son's, that the title had vested in him by operation of the statute of Georgia; that he had a title to the same that was immune from attack by the father or anyone claiming through him. In this state of the record we find that the father by his own testimony, makes out of the proposition made (as he says) shortly after the survey of 1905, a case of proposing to treat the gift already consummated, as an advancement, which the son did not yield to. Whether gift or advancement in 1915 the land and its rights were M. C. Coleman's as much so as if he then held a deed to it from E. J. Coleman. He has by his action in 1915 stripped himself of this property with intent to defraud his creditors, as completely as if he had made a deed to it to his father; because what he has done has been to yield that most valuable of all rights appertaining to realty namely, the possession and fruits thereof, to one who could make some show of claim to title, because of the title held prior to 1902. In this manner he has put the trustee to his suit to regain that possession and the rents of the property. He has by acts done within four months prior to his bankruptcy transferred his property as effectually and as skilfully as any fraudulent device could be worked out to defeat creditors. Of course he did not make a deed to it, because that would have estopped E. J. Coleman from denying that in 1915 M. C. Coleman had the title. But he disposed of the possession of the land, and the property right he then had in the rent notes, and necessarily did an act amounting to a transfer within the definition of that term, which includes "EVERY MODE of disposing OR PARTING WITH property or the POSSESSION of property."

The bill was filed in the lower Court, September 20th, 1916, invoking jurisdiction under Sections 60 b, and 70 e, for the bankrupt had scheduled his father as a creditor, and it was not certain whether E. J. Coleman might claim that he received the rent notes as a creditor or not.

The Court below eliminated the case from Section 60 (b), and 70 (e), stating that the evidence showed the transaction as to the rent notes took place within the four months period.

The Court below considered all of the evidence, and in order to lighten the labors of this Court granted a certificate of jurisdiction, which will save this Court weighing the evidence, as to whether the land was given the son or not. Although of course this Court would have jurisdiction to determine even a contested issue of fact involving jurisdiction.

The Court below decided that what occurred between father and son in 1915, did not amount to any **transfer** within the bankruptcy act as would give the Federal Court jurisdiction; and that if land became the son's land it is still his.

The appeal was made directly to this Court, on the jurisdictional question alone.

III.

SPECIFICATION OF ERROR.

The errors assigned duly filed with the appeal complain of the final decree dismissing the bill for want of jurisdiction because the Court as a Court of the United States has jurisdiction to entertain the action under Sections 60 b, 67 e, and 70 e, of the Bankruptcy Act; because the Court has jurisdiction to grant the relief prayed for, and because the evidence of the complainant showed that such a transfer of property of the bankrupt was made by him in January or February, 1915, or at least within two months prior to May 8th, 1915 (the date of the filing of the bankruptcy proceedings), with intent to hinder delay and defraud his creditors;

all of which errors are more fully set forth in the assignment of errors (Record, pp. 59-61) complaining solely of the dismissal of the bill for want of jurisdiction, and all of which are relied on.

IV.

ARGUMENT.

In order to determine whether such a fraudulent **transfer** within the meaning of the Bankruptcy Act, took place, it is necessary that this Court should know the peculiarity of the law of Georgia relating to parol gifts of real estate.

Under Section 4151 of the Georgia Code of 1910, which has been the law of Georgia since the first Code of 1860, it is provided:

> "Presumption of gift. The exclusive possession by a child of lands belonging originally to the father, without payment of rent for the space of seven years, shall create conclusive presumption of a gift, **and convey title to the child,** unless there is evidence of a loan, or of a claim of dominion by the father acknowledged by the child, or of a disclaimer, on the part of the child."

Actual possession is unnecessary, possession by a tenant is sufficient.

Daniel vs. Frost, 62 Ga., 703.

There has been no construction of this code section by the Georgia courts, as to whether a disclaimer orally made by the child after the seven years exclusive possession, etc., would operate to transfer his rights inter sese—but on familiar principles the son could estop himself by such conduct from afterwards claiming title.

At an early date in Georgia, when there was no statute of prescription relating to realty, but only a statute of limitations by which the right of action for land would in time be barred, it was held that one in adverse possession could after the rights of the true owner had become barred, orally abandon his right of possession to the true owner, and apparently by this verbal act, yield up his rights in the land.

Cook vs. Long, 27 Ga., 280:
Russell vs. Slaton, 25 Ga., 193.

Which were cases of abandonment of the possession of the land.

But, since our statute which permits an occupant of land generally under certain circumstances to acquire a prescriptive title, it has been held that mere **abandonment** after title has vested will not pass title to the holder of the paper title.

Tarver vs. Deppen, 132 Ga., 802.

It may well be, that as between father and son, where the rights of third persons are not involved, the son might after the seven years exclusive possession, verbally disclaim his title and the rents to accrue, to his father, and thereby revest the father with title, but not to the injury or prejudice of the son's creditors.

Certainly that is exactly what was sought to be done in the case at bar, but we claim that rights of others were involved, and that this could not be accomplished either by written or verbal acts, as against the rights of creditors and the trustee in bankruptcy of M. C. Coleman.

The following Georgia decisions illustrate and apply the law of conclusive presumptive gifts of land by parents to children.

Lemon vs. Wright, 31 Ga., 324, where an attempt was made to revoke the gift of a slave to defeat creditors.

Gill vs. Strozier, 32 Ga., 688, where the presumption under the facts were deemed conclusive.

Mims vs. Lockett, 33 Ga., 9, where the seven years did not expire, but the donee made permanent and valuable improvements and the father could not resist a bill for specific performance, on the contention that the rents had more than compensated the donee for all improvements and expenses.

McKee vs. McKee, 48 Ga., 334, the Court said the whole idea of the law is based upon the conduct of the father that he has for seven years allowed the son to keep his land, without paying rent, and has claimed for all that time no dominion over it."

Daniel vs. Frost, 62 Ga., 703, where the Court said that

> "the mere retention of the formal title is not uncommon. When parents give land to their children they frequently take their own time to convey, sometimes by deed, sometimes by will and in here and there an instance, delaying until death surprises them and it is too late to convey at all."

And the Court in the same case, further proceeded to show,

> "the law takes note of the acquisitive principle of human nature which impels men ordinarily to accept whatever bounty is offered them. A creditor is not over rash in shaping his own action by a presumption which the law itself indulges in."

In Poullain vs. Poullain, 72 Ga., 412 (5), where it was held that the presumptive gift could be proven by direct or circumstantial evidence.

Johnson vs. Griffin, 80 Ga., 551, which holds that the presumption arises, "even though it is certain that the father retained the paper title, and though that fact be admitted by the son." "The assertion of dominion by the father contemplated, is over the **property** not the paper title."

"The son's acknowledgment that the paper title is in the father will not prevent the statute from taking hold and completing the gift." And the title acquired by the son under the statute, is a statutory title.

But, aside from the Code Section 4151, in Georgia the doctrine of equitable titles obtains. One who goes into possession of land and pays the purchase money, acquires a complete equity, on which he may maintain ejectment against any disseizor.

McCandless vs. Inland Acid Co., 115 Ga., 968 (2).

And where a child goes into possession of land on the faith of an oral gift from the parent and erects permanent improvements, the child is vested with a perfect equity, even though seven years have not expired.

Causey vs. Causey, 106 Ga., 193, 194.

And the title acquired by the child, even prior to the seven years, is superior to that of a subsequent deed made for value by the parent.

Dunn vs. Bray, 88 S. E. Rep. (Ga.), 931.

The Statute of 13th Eliz. Ch. 5, and the Bankruptcy Act of 1898 as amended, Sec. 1, Sub. Sec. 25, Sec. 67 e, and 70 e.

The question of jurisdiction arises as to whether anything was **transferred** by the debtor bankrupt to E. J. Coleman, within the intent and meaning of the bankruptcy act. A consideration of this question naturally involves the question of fraudulent transfers therein denounced, and the subject generally of conveyances made to defraud creditors.

The Statute of Elizabeth, relating to fraudulent conveyances, mentions "feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or any of them, or of any lease, rent, common or other profit or charge out of the same lands, tenements, hereditaments, goods and chattels, or any of them BY WRITING OR OTHERWISE." Made to the end, purpose and intent, to delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts," etc., which were declared utterly void, frustrate and of none effect."

This statute, which was merely declaratory of the common law has always been liberally construed to the end that fraud may be detected and its design overthrown by justice.

It will be noted that the statute mentions "by writing or otherwise." The Georgia Code of 1910, Sec. 3224, provides,

> "Every conveyance of real or personal estate, BY WRITING OR OTHERWISE, and every bond, suit, judgment and execution or contract of any description had or made with intention to delay or defraud creditors and such intention is known to the party taking," is void.

Many States of the United States have adopted the language, "By writing or otherwise" in their statutes against fraudulent conveyances, namely, Georgia, Alabama, Colorado, Indiana, Michigan, Nebraska, Rhode Island, and perhaps others.

The lower Court in the case at bar, thought that only derivative titles were included under 67 e, of the Bankruptcy Act, and as M. C. Coleman did not make a deed to the land to E. J. Coleman in 1915, the Court was of the opinion that it had no jurisdiction to grant any relief to the trustee. But this view of the law is narrow and restricted and as we hope to show is at variance with the broad meaning given to the words of the act by definition contained in the act, and by cognate cases.

While few cases may be instanced, where the failing debtor and his fraudulent conspirator have risked the transaction on the somewhat insecure foundation of oral negotiations relating to land, we have found several cases where courts have frustrated the purpose of the parties, under the statutes against fraudulent conveyances.

In Waites vs. Davis, 158 Fed. R. 677, affirmed in 164 Fed. 397. It appeared that a corporation by entry had acquired the right to obtain a patent, provided it continued the improvement of the land and complied with the law. One of its stockholders, in order to defeat the judgment lien of a creditor of the corporation, permitted the corporation to forfeit its right of patent by non action, and have a third person enter and continue the improvements and thereby acquire the patent. This third person filed a bill to have the lien cancelled, and the Court held the arrangement was in effect a fraudulent conveyance.

> "The law and the statute prohibit every disposition of property which is designed and intended to hinder, delay or defraud creditors. It is immaterial by what

instrument, proceedings or means the alienation or transfer may be accomplished. A Court of equity will cut its way through the process by which a debtor's property was transferred no matter how novel and unprecedented the arrangement may be and lay its hands upon the fraudulent purpose which was designed to be accomplished, if such purpose appears and declare the transaction fraudulent."

158 Fed. R. 677.

"An agreement by one entitled to a conveyance, that the grantor shall remain in possession and shall not convey, in order to cover the land from the grantee's creditors, amounts to a conveyance to defraud under 2 Rev. St. 154."

Pennington vs. Clifton, 11 Ind., 162.

"Any sale, contract or arrangement, if entered into with the intent to hinder, delay or defraud creditors is void as to them."

Chandler vs. Von Roeder, 24 How (U. S.) 224.

"It is the motive of the giver, not the knowledge of the acceptor that is to weight. The Statute (of Elizabeth) extends to ALL CASES. * * * The transaction smells of craft and experiment, to give them in part their legacies which they would not have had if he had paid them in part of their legacies; for then they must have refunded.

Partridge vs. Gopp, Ambler, 596.

The Bankruptcy Act, sec. 1, subsection 25, defines transfer, which shall "include EVERY MODE OF DISPOSING OF OR PARTING WITH PROPERTY OR THE POSSESSION OF PROPERTY, absolutely or conditionally, as a payment, pledge, mortgage, gift or security."

The Bankruptcy Act itself does not declare that only derivative titles shall be vulnerable to attack for fraud. The language used in the above definition has been several times referred to by this Court.

"All technicality and narrowness of meaning is precluded. The word is used in its most comprehensive sense, and is intended to include every means and manner by which property can pass from the ownership and possession of another and by which the results forbidden by the statute may be accomplished * * *."

> Carson, Pirie, et al vs. Chicago, etc., Co., 182 U. S. 438.

"the words, 'as payment, pledge, mortgage, gift or security,' as used in the definition are illustrative merely, and do not so qualify the meaning of the term so as to permit a transfer by any other method."

> Collier on Bankruptcy (ninth Ed.), p. 14;
> In re Stege, 116 Fed. R., 342.

Section 67 e, of the Bankruptcy Act as first passed in 1898, construed in connection with section 23 b, as then formulated, gave no jurisdiction to the Federal Courts in actions by the trustee against adverse claimants, unless the defendant consented.

Section 23 b was amended in 1903 so as to include actions under 67 e and 70 e, and section 67 e was also amended at the same time, but section 70 e remained as originally enacted.

The amendment of 1910, added to section 70 e, to vest jurisdiction in the Federal Courts under that section without the defendants consent.

A glance at the following decisions will show the application of the original act, and the amendments thereto.

Bardes vs. Bank of Hawarden, 178 U. S. 524;
Wood vs. Wilbert's Sons Shingle Co., 226 U. S. 384;
Harris, Trustee vs. First National Bank, 216 U. S, 382.

In reference to the first case, its application to the question has been set aside by subsequent amendments to the act.

The second case arose prior to the amendment of 1910, which vests jurisdiction in the District Court of actions by the trustee under Sec. 70 e.

The third case arose before the amendment of 1910, but the Court assumed for argument purposes that even if 70 e authorized the trustee to sue in the Federal Court without the defendant's consent, that the facts involved showed no transfer by the bankrupt, for he had pledged securities to a bank for a loan, and had afterwards repaid the loan, and the bank refused to surrender the collateral. This was held to be a withholding of property but not a transfer by the bankrupt.

No case that we know of, decided by this Court has construed section 67 e, or 70 e, to mean that the word "transfer" shall include derivative titles only. And we wish to show that Congress could not have intended this restrictive meaning to apply.

The citation of authorities by the Judge of the lower Court (Record, p. 55) do not at all sustain the position taken by him. In Newcomb vs. Bivins, 199 Fed., 529, the title and possession of the land never had been in the bankrupt.

At the outset, in 1898, the Bankruptcy Act was deficient in giving to the trustee an effective forum to set aside fraudulent conveyances or preferential conveyances or transfers. It was soon found that delays to creditors and interminable litigation would result in working out the rights of creditors through the various State courts.

For that reason the act was amended in 1903, and again in 1910 so as to vest jurisdiction in the Federal Court without the defendant's consent to recover voidable preferences under 60 (b) and fraudulent transfers under section 67 e and 70 e. The history of the amendments show that Congress intended that the act would subserve the best interests of all parties to vest jurisdiction thereunder in the Federal Court, without the defendant's consent. We certainly cannot assume that the amendments were made for the benefit of the fraudulent grantees, or transferees.

THE TRANSACTION in 1915, and the transfer of the rent notes and the fraudulent disclaimer of interest in the locus in quo.

If M. C. Coleman had held the rent notes, which themselves were equivalent to a lease of the premises for 5 years, and continued his possession of the locus until after May 8th, 1915, the date when he was adjudged bankrupt, the Federal Court would have brought within its jurisdiction the property, and would have had the power to determine the ownership of it. And this could have been accomplished on summary notice to E. J. Coleman.

Dayton, Trustee vs. Stanard, 241 U. S. 588;
Murphy vs. John Hoffman Co., 211 U. S., 562;
White vs. Schloerb, 178 U. S., 542;
Whitney vs. Wenman, 198 U. S., 539;
Coder vs. Arts, 213 U. S., 223;
Acme Harvester Co. vs. Beekman Lumber Co., 222 U. S. 301;
Clay vs. Waters, 178 Fed. R., 393.

But this was what M. C. Coleman wished to avoid, and in order to accomplish his purpose, he sent the rent notes to E. J. Coleman, and in view of the fact that E. J. Coleman by virtue of his previous title to the locus in quo prior to 1902, could very easily set up the claim that this paper title held by him prior to 1902 had never vested in M. C. Coleman, but that he, E. J. Coleman, always had been the owner of the locus in quo, and to accomplish the design of the two, M. C. Coleman fraudulently disclaimed any interest or ownership in the land and in the rents of the land, and E. J. Coleman assumed control over the possession of the property, collected the rents of the same, and directed certain repairs to be made on the premises, and the tenant of the son attorned to the father.

And while summary proceedings are available to the trustee as to property in custodia legis, yet plenary proceedings are available to him in the Federal Court as to such property.

Whitney vs. Wenman, 198 U. S., 539.

If an arrangement of this kind can not be set aside in the Federal Court, designing persons will seldom resort to formal transfers of title to effect their fraud; on the contrary there are many instances where the fraud could easily be conceived and carried into some effect by verbal acts, and change of possession of realty, in Georgia, and other States, with immunity from suit in the Federal Courts and where the advantage of local influence would greatly benefit them.

We will illustrate those cases later. For the present we wish to show the Court that what took place in 1915 amounted to a disseizin of M. C. Coleman by E. J. Coleman with the consent of M. C. Coleman as to the locus in quo, and that it happened by virtue of the transfer of the rent notes, the assumption of ownership by the transferee, E. J.

Coleman, the taking possession of the land and having the tenant attorn to him, and making the repairs, and the hostile claim set up by E. J. Coleman to the land, as against the trustee in bankruptcy.

The status of this land prior to the transfer.

Possession in M. C. Coleman from 1902 until 1915, and permanent improvements of large value; continuous exercise of ownership by him, and appropriation of rents for his own purposes; holding out of property by him to his creditors as an asset; renting the land to Dan Davis in 1913 as a landlord of the property and use of the rents collected from Davis in October, 1914. No exercise of dominion over the property by E. J. Coleman since prior to 1902; no payment of rent to E. J. Coleman, and no waiver or disclaimer of any rights by M. C. Coleman to E. J. Coleman.

Ownership and claim by M. C. Coleman of $4,000.00 rent notes being the rents of this realty which he claimed as his own.

The status of this land after the transfer in 1915.

E. J. Coleman in possession of $4,000.00 of rent notes formerly belonging to M. C. Coleman. The collection of the rent for 1915 by E. J. Coleman who collected it under the claim of and assertion of ownership of the title to the land; the collection of the 1916 rent, also the 1917 rent, and the intent to collect the 1918 rent (which will have become due prior to this argument). The disclaiming by M. C. Coleman of any interest or right in the land or in the rents thereof. The intention of M. C. Coleman that E. J. Coleman shall have the possession of the land and append the same to the title which E. J. Coleman had to this land acquired prior to 1902. E. J. Coleman admits that M. C. Coleman "gave it up to me" Record, page 44.

The title to this land vested in the son certainly after the expiration of seven years from the time he entered, and as he entered about 1902, in 1909 his title vested. This was a legal title under the Georgia statute.

While some claim is made that the father, E. J. Coleman, exercised dominion over the land, there is no evidence of any ACT of such dominion. In response to the question: "Will you please tell the Court what act of dominion you exercised over this land in dispute during those twelve years?" E. J. Coleman answered: "I didn't have but mighty little money and give it to the boy, if he could make a living on it, to do it."—Record, p. 41, lines 22-25.

The effort made by the son to indicate that he acknowledged title in the father as to the railroad right of way is abortive, for that did not happen until 1911 (testimony of J. H. Rowland, Record, p. 51), and no deed was made for the right of way, and there was no assertion of dominion over the title, nor was there any disclaimer by the son at that time of the title.

That the son intended by his conduct and acts in 1915 to yield up the possession and title to the land to E. J. Coleman, we call the Court's attention to the following: Testimony of E. J. Coleman, p. 44:

"Q. When were you there in those two houses?"

"A. SINCE HE GIVE IT UP TO ME I was in one of them, and ate dinner in the other house the day that we surveyed that piece of land that Gillis brought up to you."

And E. J. Coleman, since the transaction in 1915 complained of, entered in the land, claiming ownership, for he said on page 44, 45 of the Record:

"A. And since he gave it up to me, I went with Dan Davis to look at its condition. * * * I went over to the house with him from where I was building another house near the place, and went into the house, and looked at it."

And the son, M. C. Coleman, fully recognized that his act in 1915 was in effect an effort to **give** the land back to his father, for on page 37 of the Record, the son testified as follows:

"Q. And when these creditors got to entering suits in the courts then for the first time in 12 years you GAVE IT TO YOUR FATHER? ISN'T THAT SO?"

"A. Well, I guess it is."

M. C. Coleman fixes the date when he surrendered the notes and his rights to the land to E. J. Coleman as follows:

"I know that I saw him not two months before I went into bankruptcy, possibly a month afterwards, I think I mailed him the notes."—Record, p. 33.

Although the father, E. J. Coleman, testified: "He sent these notes to me by a boy, and I never had any conversation with him at all."—Record, p. 44, line 18.

The Ninth paragraph of the bill of complaint distinctly charged that E. J. Coleman was withholding from the trustee the land and the improvements and rent notes.—Also set forth the value of the permanent improvements made by M. C. Coleman.

The defendant, on oath, filed answer, and in the ninth paragraph of his answer (Record, p. 9) denied the allegations of the ninth paragraph of the complaint, and set up that the improvements made by M. C. Coleman were made at scarcely no cost to M. C. Coleman, but from the product of the land, together with what was advanced to the said M. C. Coleman by defendant.

The contention thus made by E. J. Coleman is entirely refuted by the many reliable witnesses for the complainant, and there is no evidence of M. C. Coleman or E. J. Coleman to support the contentions made by E. J. Coleman. The defendant in the sixth paragraph of his answer virtually admits that in accepting the rent notes from M. C. Coleman he "ratified the said trade, which he knew he need not do unless he wished."

We also call attention to a statement in the opinion of the Court which is not borne out by any evidence.

The judge said: "This 50-acre tract went into the possession of the trustee and there is no contest over its ownership."—Record, p. 55.

This 50-acre tract, owned by M. C. Coleman, was included in the land rented by M. C. Coleman to Dan Davis. The rent notes covered the aggregate land, the locus in quo, plus this 50-acre tract. When the bankruptcy petition was filed by M. C. Coleman, Dan Davis, the tenant of M. C. Coleman, was in possession under this rental contract of the locus in quo and the 50-acre tract. The trustee in bankruptcy never did take possession of this 50-acre tract. The transfer made by the bankrupt to E. J. Coleman of the rent notes, as effectually transferred the rents of this 50-acre tract, as it did the rents of the locus in quo. The Judge was therefore in error in stating that the trustee took possession of the 50-acre tract. The trustee sold the 50-acre tract to E. J. Coleman, and E. J. Coleman, under the opinion of the judge, was liable for the rents of the 50-acre tract accruing during the year that the same was sold by the trustee.

We may ask, if the Court deemed the transfer of the rent notes, as to this 50-acre tract void, and deemed that the Court had jurisdiction to require E. J. Coleman to pay the pro rata rents of the 50-acre tract, why did not jurisdiction of the Court exist to set aside the transfer of the rents of

the locus in quo, as both rents were transferred by the very act, uno ictu, in delivering the rent notes to E. J. Coleman in 1915?

Bearing in mind that the son took possession of the locus in quo in 1902, and the survey was made in August, 1905, and the father, E. J. Coleman, claims that shortly thereafter the alleged second arrangement was made which M. C. Coleman did not assent to (Record, p. 39, Record, p. 37), the son undertakes to explain that the reason why he bought another place was because he did not wish to accede to the proposition of E. J. Coleman (Record, p. 37), where he says: "I would not do it. I went and bought another place." Yet, he did not buy this other place until 1913 (Par. 6th of Bill, Record, p. 2, admitted in paragraph 6 of answer, Record, p. 8). And in 1914, M. C. Coleman was continuing to improve the locus in quo, by building a tenant house thereon for Dan Davis (Record, p. 23, line 10), rented the locus in quo as his own property in 1913 (Record, p. 20, testimony of Dan Davis), made a written statement for credit January 15th, 1914, in which he stated he owned 650 acres; and made frequent representations that the land was his after 1913, and the Court will readily grasp the situation that the bankrupt is not telling the truth in reference to his true relation to the land in question. The Court will also notice this significant fact, that in the taking of the testimony in the case, on May 11th, 1917, (Record, p. 12), M. C. Coleman and F. C. Gillis testified on that day. The former said the second arrangement was made shortly after the first, possibly a month or two (Record, p. 32, Record, p. 37), most of the other witnesses for complainant testified on May 11th, and the hearing was adjourned until May 12th, 1917, owing to physical condition of E. J. Coleman (Record, p. 38). And E. J. Coleman testified on that date that the second arrangement was made "about the first time I reckon, that he was back at my place, after surveying it." (Record, p. 39). Which would mean shortly after August, 1905.

E. J. Coleman saw that his son, M. C. Coleman, placed him in a serious dilemma by stating that the second arrangement was shortly after the first, or shortly after 1902, because he then could not explain why he surveyed the land for his son in 1905, which would necessarily mean that a third arrangement had been made. Hence it is, that we find his version of the date of the second arrangement is after the survey.

In proceedings to recover real property, in Georgia, what is known as the "consent rule" is always considered filed, which means that lease, entry and ouster are admitted by the defendant or claimant. Code 1910 of Georgia, Section 5585.

And Section 6282 of the Georgia Code, 1910, provides:

"No party shall be admitted to defend an ejectment cause, or an action of complaint for land, who does not admit that he was in possession of the premises in dispute at the commencement of the action."

If M. C. Coleman had retained the notes and the possession of this property until after May 8th, 1915, the date of his bankruptcy, the trustee would have obtained possession of the notes, and the possession of the property, and would have been entitled to hold and administer the same, and the court of bankruptcy would have decided any claim to the title. But in attempt to avoid this jurisdiction, and to disturb any rights that might vest in the trustee, the rent notes were transferred by M. C. Coleman, and oral disclaimer of title made, and E. J. Coleman stepped in and asserted his rights in the rents and in the land.

A result, therefore, has been accomplished by acts and intent, which for all practical purposes are equivalent to a conveyance by deed of a title to the locus in quo shortly before

bankruptcy, for not only has the bankrupt and his trustee lost the possession of the property, but also the evidence of indebtedness representing the rents thereof, all of which have been **transferred** to E. J. Coleman.

The action of ejectment in Georgia involves the possessory title.

Cumming vs. Butler, 6 Ga. 88.

And the title necessary to support the action is such that would legally authorize him to recover possession of the land.

Parker vs. Brown, 39 Ga. 50.
Blackmon vs. Burt, 99 Ga. 118.

The accepted meaning of "transfer," aside from the bankruptcy act is "the act by which the owner of a thing delivers it to another with the intent of passing the rights which he has in it to the latter."

Bouvier Law Dictionary, p. 1133.

And in Georgia, it "covers any act by which the owner of anything delivers it to another with the intent to pass his rights therein."

Hendrick vs. Daniel, 119 Ga. 361.

And where adverse possession to realty is set up, all idea of right is excluded and the only question is quo animo, the possession was taken.

Smith vs. Burtis, 9 Johns. 180.
Innerarity vs. heirs of Mims, 1 Ala. 669.

"Rights of ownership are substantially the same as those incident to possession. * * * The owner is allowed to exclude all, the possessor is allowed to exclude all but one and is accountable to no one but him."

Holmes Common Law Lect. 6.

And possession of real estate is presumed to accompany ownership until the contrary is proved.

Fletcher vs. Fuller, 120 U. S., 534.

And actual occupation without apparent right is the lowest degree of title. This happens when one disseizes another.

2 Black. Com. 195.

And disseizin in Georgia results from "the fact of possession and the quo animo it was commenced and continued," "where one enters intending to usurp the possession and to oust another of his freehold."

Moody vs. Fleming, 4 Ga. 120.
1 Inst. 153.

And mere possession of land in Georgia is the lowest and most imperfect degree of title. The court indicates that title to land can be evidenced by possession.

Peck vs. Land, 2 Ga. 7-8.

M. C. Coleman in 1915 had the title to this land as completely as if it had been deeded to him. The statute expressly provides that the possession under the circumstances **conveys** title. His trustee in bankruptcy would have collected the rents and administered the realty without the molestation of E. J. Coleman. The bankruptcy court would have had jurisdiction to administer this asset, by virtue of the possession and ownership of M. C. Coleman.

THIS HAS BEEN DENIED THE BANKRUPTCY COURT, BY THE ACTS AND CONDUCT OF THE RESPONDENT AND THE BANKRUPT, as the lower court says, within four months prior to the bankruptcy of M. C. Coleman. (Record, p. 54.) HOW HAS IT BEEN ACCOMPLISHED?

By the son, M. C. Coleman, transferring the rents of the land to E. J. Coleman, by E. J. Coleman taking the right of possession of the land, and asserting his ownership of the land, by his entering into the possession of the land, and by his having the tenant attorn to him and paying him the rents as owner, and by his resisting the Trustee's right to the possession. The payment of rent by the tenant Gillis to E. J. Coleman, the latter asserting his ownership of the land is an attornment, and the possession of Gillis is now the possession of E. J. Coleman.

Knorr vs. Raymond, 73 Ga. 749 (3).
24 Cyc. 891 (c).

But the lower court says, that if the title was in M. C. Coleman in 1915 just prior to these acts, it is still in him. (Record, p. 55.) This is the argument of counsel for E. J. Coleman; of course the title is still in him, and it would be still in him, if he had conveyed by formal deed the land to E. J. Coleman, for the bankruptcy act declares that such conveyance is void, and so does the Georgia statute.

But, our answer to the argument is, that if the title is still in M. C. Coleman, he has by his acts interposed a serious obstacle to getting the benefit and enjoyment of that title. For E. J. Coleman has disseized the bankrupt and his trustees, by his acts and conduct, with the connivance of M. C. Coleman, and has seized upon the rents of the land and has collected $3,000.00 of the rents, and before this case is argued will have collected the full $4,000.00 rents of the land.

The lower Court says that the rents follow the title. If this be true and the title is still in M. C. Coleman, the rents are not following the title, because of the invalid transfer and we have asked the Court to order the payment of such rents to the trustee by E. J. Coleman, and the possession of the property recovered.

The lower Court, however, says that it has no jurisdiction because nothing has been transferred by the bankrupt, and that our remedy is only in the State Court. (Record, p. 55.)

May we inquire what would be the remedy in the State Courts, if they were resorted to? It would be an action of equitable ejectment. This would become necessary because E. J. Coleman has with M. C. Coleman's consent, ousted the latter of his freehold. The act quo animo constitutes the ouster. If he has ousted the bankrupt of his freehold, why do not the acts that render this State Court proceeding necessary, amount to such a transfer as will confer jurisdiction on the Federal Court to accomplish the same result?

Where one acquired title to land by adverse possession, a court of equity will enjoin the defendant from asserting title to the same premises from former ownership that has been lost, and complete the means by which the right, estate or interest of holders of real property may be proved and **to remove obstacles to its enjoyment.**

Sharon vs. Tucker, 144 U. S. 533.

In the above case, it is true that the owners of the prescriptive title had not been ousted by the holders of the paper title. In the case at bar the bankrupt abandoned the possession to his father.

And because M. C. Coleman has transferred the rents, and thereby transferred the possession to E. J. Coleman, who has taken possession of the locus in quo, and asserted title thereto,

a court of bankruptcy can determine the trustee's right to the premises. "And where the title is purely legal, for such and similar causes to those we have enumerated, equity has carved out a branch of jurisdiction and a class of bills termed in the books ejectment bills, in which not only the title is made clear, but the POSSESSION DECREED ALSO."

Sharon vs. Tucker, 144 U. S., p. 545.

The aid of a court of justice becomes necessary to restore the status of 1915. Even where a title by adverse possession had ripened into a fee, and the holder abandons the same to the holder of the paper title, yet it requires the aid of the law to restore the former possession.

Inhabitants of School District vs. Benson, 31 Maine, 381.

And a verbal gift of land, the donee entering, creates at least a tenancy at will which is **an estate in land.**

Co. Litt. 55-a, 2 Black Com., 145.
Jackson vs. Rogers, 1 John Cas. 33.

By the ACTS and conduct of the parties "POSSESSION" has changed, and a disposition of the possession of property is a transfer within the bankruptcy act.

Abandonment by an adverse holder may bring about an estoppel which will defeat the holder's rights.

Tarver vs. Deppen, 132 Ga. 804.

Certainly no court would aid M. C. Coleman to regain possession from E. J. Coleman. In pari delicto potior est conditio possidentis.

Bolt vs. Rogers, 3 Paige 154, 157.
Dent vs. Ferguson, 132 U. S. 66.

"Any conduct which estops one in pais to assert title or right of possession to land is a good defense to ejectment."

15 Cyc. 76.

"It would seem too late to contend that the title to real estate can not be passed by matter in pais, without disregarding the statute of frauds."

Kirk vs. Hamilton, 102 U. S. 77.

And in Georgia, payment of taxes by one in adverse possession of land is not a condition to his acquiring the fee.

The payment of taxes by E. J. Coleman is doubtful. It can not be established except by his oral statement. (Record, p. 41, line 7th from bottom). His tax returns were general. There is no method of determining whether he included all his property or not. (Record, p. 41). And payment of taxes by the parent is entirely consistent with a gift or advancement of realty.

Tuggle vs. Tuggle, 57 Ga., 520.

No question whatever is raised as to whether an adequate and complete remedy at law in the Federal Court existed. That question is not jurisdictional, and would seem foreclosed entirely by the following authorities:

Equity Rule of this Court, No. 22;
Act of Congress March 3, 1915 (38 Stat. at L. 956);
Friederichsen vs. Renard, decided May 20th, 1918;
Collins vs. Bradley, 227 Fed. R., 199.

A plain, adequate and complete remedy does not exist at law, for the trustee. For if ejectment were maintained, and the possession restored to the trustee, we would still find the paper recorded title in E. J. Coleman prior to 1902. This

would always interfere with a ready sale of the land, and would rest as a cloud on the trustee's title. This circumstance, coupled with the fraud of the bankrupt and the respondent, are ample grounds for supporting the jurisdiction of equity to grant relief. We would have to maintain an action in the State Court in equity, for complete relief, and the State and Federal Courts have concurrent jurisdiction, to set aside this transfer and recover the possession of the property, and grant FULL and COMPLETE relief.

The following authorities sustain our contention:

Jordan vs. Faircloth, 27 Ga., 372, 377;
Ruckman vs. Cory, 129 U. S., 387;
Stewart vs. Masterson, 131 U. S., 151.

The cause of action is based upon fraud. Equity has always been peculiarly conversant with that subject, and granting relief therefrom. The right of the complainant to have the rent notes (uncollected at time the bill was filed) impounded and ordered surrendered is in itself a ground for interposition of equitable relief. Choses in action in the hands of a voluntary assignee will be subjected by equity to the payment of the debts of the grantor.

Wright vs. Petrie, 1 Smed & M., 282.

Equity can and will require restitution to be made in cases of fraudulent conduct of the respondent.

The cause of action of the complainant in this case, is the wrong done; that wrong consists of the bankrupt, M. C. Coleman fraudulently yielding up to E. J. Coleman the possession of the land, fraudulently transferring $4,000.00 rents of the land, fraudulently asserting that he had no rights in the land, fraudulently putting it out of the power of the Federal Court to draw to itself jurisdiction over this land, on the filing of bankruptcy proceedings by virtue of bank-

rupt's possession. And moreover, the fraudulent assertion and exercise of ownership and dominion over the land and its rents, by E. J. Coleman in 1915, at a time when M. C. Coleman was the legal owner of the land and the rents thereof.

The usual relief granted by a court of equity where a fraudulent transfer has been made, is to require the respondent to do all things needful and necessary to restore the property and its full and complete enjoyment to the complainant and otherwise abide by the lawful orders of the Court.

The lower Court decided that there is nothing to "cancel." It is true that the evidence does not disclose any written instrument whereby formal conveyance of the paper title of land was attempted to be conveyed by the son to the father. But there is relief which a court of equity may grant, and which it was requested to grant, and which is germane to the main prayers of the bill, namely, the recovery of the possession of the property from E. J. Coleman, setting aside the transfer of the rent notes and recovering the same from him the amounts which had been collected, and impounding those rent notes which had not been collected when the bill was filed. And having jurisdiction to grant full and complete relief, to require the respondent to place the formal paper title in the complainant, and enjoin the respondent from setting up or asserting any hostile claim against the premises and its rents forever.

THE IMPORTANCE OF THE QUESTION INVOLVED

The Court below was of the opinion that the act of transferring the four thousand dollars of rent notes made by M. C. Coleman to E. J. Coleman within two months of the filing of bankruptcy proceedings, the assumption of control and possession of the locus in quo by the respondent thereunder, and the attornment by the tenant Dan Davis to E. J. Coleman by

virtue thereof, and the subsequent improvements made on the locus in quo by E. J. Coleman, and the disclaimer of ownership fraudulently made by M. C. Coleman did not constitute a "TRANSFER" within the meaning of section 67 e of the laws of Congress relating to bankruptcy so as to confer jurisdiction. The lower Court being of the opinion that the word **transfer** as therein used means, as applied to real estate, a derivative title.

The Court assumes for the sake of the jurisdictional question that the acts of E. J. Coleman, and the permanent improvements and long possession acquiesced in by the parent E. J. Coleman, placed title to the locus in quo in M. C. Coleman, and that it is still his property and being his property, and rents of the same being his, that the acts proven, did not by themselves constitute a transfer, within section 67 e, assuming that the fraud as laid was also proven.

We submit that this position is untenable, not only by the definition of the word TRANSFER, contained in section 1 of the bankruptcy act, and the cognate decisions on questions of fraudulent conveyances to defeat the payment of debts, but is in itself one that seems to us to beg the question at issue. For if the title of the land be in the son, and the rents follow the title, the son M. C. Coleman has transferred the rents thereof. And if the title be in the son, and the rents thereof have been fraudulently transferred within four months prior to the filing of the bankruptcy proceedings, and the possession of the property delivered to E. J. Coleman, the United States District Court has jurisdiction to recover the rents, and as the transferee of the rents has assumed possession of the locus in quo, it has jurisdiction and power to require restoration of the possession, and place the trustee in statu quo, and require the respondent to do such other things that may be needful or necessary to place the paper title in the son, for the purpose of administration in bankruptcy.

We submit, that in those States where implied trusts of real estate exist, where one pays the purchase money, and the paper title is taken in another, the bankruptcy act, its purpose, intent and spirit can be set at nought by designing persons, by evading the jurisdiction of the Federal Court, by transferring possession of realty to the fraudulent transferee, disclaming ownership, and asserting the position that the property has always been the transferee's as he paid the purchase price. This has too often been resorted to in Georgia to defeat creditors and they have been able to defeat creditors, because of the fact that it is difficult to disprove the contentions, and the local influence of the parties have weight with juries, which in all equity causes in Georgia try contested issues of facts.

The following authorities will illustrate to what extent the jurisdiction of the Federal Courts in bankruptcy may be nullified by fraudulent debtors and those colluding with them, thereby defeating the intention of Congress.

Georgia Code 1910, Sec. 3739, provides: "IMPLIED TRUSTS." Trusts are implied—

1. Whenever the legal title is in one person but the beneficial interest either from the payment of the purchase money, or other circumstances, is either wholly or partially in another.

The following cases show how such trusts may arise in Georgia:

"Husband purchasing land with wife's money, trust results in favor of latter."

Sasser vs. Sasser, 73 Ga., 275;
Brooks vs. Fowler, 82 Ga., 329;
Burt vs. Kuhnen, 113 Ga., 1143;
Bell vs. Stewart, 98 Ga., 669.

2. Where from any fraud, one person obtains the title to property which rightfully belongs to another.

3. Where from the nature of the transaction it is manifest that it was the intention of the parties that the person taking the legal title shall have no beneficial interest.

Section 3741 of the same Code, provides:—PAROL EVIDENCE. In all cases where a trust is sought to be implied the Court may hear parol evidence of the nature of the transaction or the circumstances or conduct of the parties either to imply or rebut a trust."

Hence it is, that a debtor in failing circumstances, to defraud his creditors, while enjoying the possession of land which he in fact owns, either by personally being in possession, or by his tenant, may deliver over this possession of the land to his relative, file bankruptcy proceedings, and claim that the relative, in equity, owns the land because the relative paid the purchase money, the debtor having taken the title in his own name through error. And if a tenant of the debtor should happen to be in possession of the land, the debtor may accomplish the same result by turning over the rent notes to his relative, fraudulently disclaim any rights because of the above facts, and force the trustee to litigate with the relative in the State Court, because no formal deed was executed to the relative.

Or, we may instance a case where the debtor having a perfect equity, by reason of the payment of the purchase money, may collude with the vendor to restore the possession to the vendor, in order that the latter may set up the paper title previously vesting the legal title in him, and then file bankruptcy proceedings, and force the trustee to litigate in the State Court, because no formal deed was executed.

A perfect equity in Georgia is the equivalent of a legal title.

Smith vs. Smith, 133 Ga. 173.

We can not believe that such iniquitious results can be accomplished under a proper construction of the bankruptcy law.

Certainly Congress did not amend the Act in 1910 to confer jurisdiction under Section 70-e, on the Federal Courts, with the intention of conferring any benefit on the bankrupt or his fraudulent transferee. And while we have no doubt that our State Courts will administer justice, yet in Georgia, none of its Appellate Courts can review issues of fact in any cases.

"The Supreme Court shall have no original jurisdiction, but shall be a court alone for the trial and correction of errors of law."

"The Court of Appeals shall have jurisdiction for the trial and correction of errors of law."

Amendment to the Constitution, Acts 1916, pp. 19 and 20.

And the verdict of a jury in Georgia, if supported by any evidence is conclusive on the Appellate Courts.

Davis vs. Kirkland, 1 Ga. Appeals, p. 7.

This has been the accepted doctrine in Georgia for many years. This Court may, therefore, realize the importance to the appellant to have the issues involved in this case determined in the Federal Court instead of being forced to litigate the question in the Superior Court of Emanuel County, Georgia, the domicile of the appellee.

Under Section 70 of the bankruptcy act, the trustee is vested by operation of law with the title of the bankrupt to all "(4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him;" and "creditors are powerless to pursue and enforce their rights, the Trustee is vested with their rights of action with respect to all property of the bankrupt encumbered or transferred by him in fraud of his creditors.

Collier Bankruptcy 9th Ed. p. 941, note 57.

In his effort to make out that the locus was not M. C. Coleman's, the respondent, E. J. Coleman, faced with the undisputed facts that for over 12 years M. C. Coleman had enjoyed and used the rents, issues and profits of the land as his own property without accounting for it, was forced to admit that the idea was that the M. C. Coleman could keep the rents until his death. On page 43, Record, the question was asked him:

Q. In other words to keep the rents until your death?

A. Yes sir.

Q. But if they get into trouble with creditors, you would go and take them away?

A. I will sir, just as sure as they get in that shape. I do not know sir, that I think that a fair arrangement."

We may well ask, how could a court of equity, where creditors' rights are involved, come to any other conclusion than that the transfer of the rent notes was a transfer of property of the bankrupt? The respondent and his son, make our a plain case whereby the son was to have the rents

until the death of the respondent; it was his own to do with as he pleased. They were forced to this admission because they could not get away from the positive fact that for 12 years the son had used the rents as his own property.

The learned Court below in his opinion on the question of jurisdiction (the merits not being decided), says:

> "Evidence favorable to the trustee's contention that the defendant had made a gift of the land to the bankrupt, goes no farther than the parties now deny that a gift ever was made. If there was a gift of the land, the title still is in the bankrupt, and he has made no transfer of it which a court of equity may cancel."—Record, pp. 54, 55.

We respectfully submit that the evidence for the trustee does go some degrees farther than the parties now deny that a gift was ever made. It goes so far as to show that a gift was made; that a conclusive gift appears from long possession, and no dominion exercised over the land by the parent, and by no disclaimer by the son or payment of rent during that time occurred; that thousands of dollars of improvements were made on the land by the son, and that he obtained credit by holding the land out as his own. That bona fide and permanent improvements had been erected by the son on the land after the gift and prior to 1905, and that the father admits that he did intend to give the son the land prior to 1905, but that after the survey in 1905 he made a proposition to the son which would mean that he wished to change the gift into an advancement, which the son rejected, but continued to hold and improve the land. We think language sometimes fails to express what we mean. We can not understand the statement of the judge of the lower Court that evidence favorable to the trustee's contention goes no farther than the parties now deny that a gift ever was made. Perhaps he meant to say, that evidence favor-

able to the trustee's contention that the defendant had made a gift of the land to the bankrupt is ample to prove the same, although the respondent and the bankrupt deny that a gift was made.

CONCLUSION.

The Court will appreciate the following uncontradicted testimony as to the title to the locus in quo.

1. THAT THE SAME WAS GIVEN THE BANKRUPT IN 1902 OR 1903 by actual verbal declarations of the parent and the assumption of possession by the son and the making of permanent and substantial improvements.

2. THAT THE SURVEY MADE IN 1905 MERELY PERPETUATED THE INTENT AND PURPOSE ON THE PART OF THE PARENT.

3. THE ALLEGED SUBSEQUENT ARRANGEMENT MADE SHORTLY AFTER 1905 AS CLAIMED BY THE PARENT WAS NOT ASSENTED TO BY THE SON THAT THIS ALLEGED ARRANGEMENT AMOUNTING TO MERELY A PROPOSITION TREATING THE LOCUS IN QUO AS AN ADVANCEMENT INSTEAD OF A GIFT. THE SON DID NOT ASSENT TO THE SAME AND ON THE CONTRARY CONTINUED TO MAKE IMPROVEMENTS EVEN AS LATE AS 1914. (Record, p. 23, tenth line).

4. THAT SEVEN YEARS AFTER 1903, A TITLE VESTED TO THIS LAND IN THE SON BY OPERATION OF GEORGIA CODE 1910, SECTION 4151, BY VIRTUE OF HIS EXCLUSIVE POSSESSION, THE NON-PAYMENT OF RENT, THE NON-DISCLAIMER OF TITLE, AND THE FAILURE OF THE PARENT TO EXERCISE DOMINION OVER THE LAND.

5. THAT IN 1915, within four months of bankruptcy, the son DISCLAIMED OWNERSHIP, TRANSFERRED $4,000.00 OF RENTS OF THE PROPERTY TO THE RESPONDENT, AND THE TENANT'S POSSESSION THEREBY BECAME THE POSSESSION OF THE RESPONDENT E. J. COLEMAN; RENTS HAVE BEEN COLLECTED BY E. J. COLEMAN CLAIMING HE IS OWNER, AND HE HAS RESISTED THE TRUSTEE'S RIGHT TO THE LAND AND TO THE RENTS OF THE LAND.

6. THAT SINCE 1915 AND THE ACTS AND TRANSFER THEN MADE, THE DISSEIZIN OF THE BANKRUPT ASSENTED TO BY HIM, BY THE RESPONDENT IF PERMITTED TO CONTINUE FOR SEVEN YEARS WOULD VEST A PRESCRIPTIVE TITLE IN THE RESPONDENT, by virtue of the paper title held by E. J. Coleman prior to 1902.

And that by virtue of these facts a transfer has been made which vests the Court with jurisdiction to grant relief to the trustee in bankruptcy.

Respectfully submitted,

FREDERICK T. SAUSSY,
A. S. BRADLEY,
Counsel for R. A. Flanders, Trustee of M. C. Coleman, Appellant.

9.

FEB 3 1919
JAMES D. MAHER,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

R. A. FLANDERS as Trustee in Bankruptcy of M. A. Coleman, Bankrupt,
Appellant,

vs.

ELISHA JORDAN COLEMAN,
Appellee.

No. [redacted]419

APPEAL FROM THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF GEORGIA.

BRIEF OF THE APPELLANT.

FREDERICK T. SAUSSY,
A. S. BRADLEY,
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FLANDERS, Trustee,
vs.
COLEMAN.

No. 984. 419

REPLY OF COUNSEL FOR APPELLANT.

The merits of the question whether M. C. Coleman was owner of the land and rent notes at the time he transferred the latter and disclaimed orally the former to E. J. Coleman, ~~is~~ are not before this Court.

Conceding that M. C. Coleman had title to the land and the notes, because of the Georgia statute under the circumstances contended conveyed title to him, the question resolves itself into whether the lower court has jurisdiction to grant relief to the trustee in bankruptcy.

We insist, that thus analyzed, the court below did have jurisdiction, for if it did not have jurisdiction, then any transfer of rents, and possession and the oral disclaimer of ownership of real estate, made just prior to bankruptcy by the owner to a third person, with intent to delay and defraud creditors, would remit the trustee to sue in the State Court, in spite of Sec. 67e of the bankruptcy act, giving jurisdiction to the Federal Court.

In other words, it can not be the law that the mere setting up of an independent title by the transferee of the notes and holder of the possession, could affect the question of jurisdiction of the Federal Court; as then the question of

jurisdiction would depend entirely upon the defense of the respondent on the merits, and not upon the allegations and proof of the complainant.

Possession of land, is itself a thing of value, that may be traded. It may be sold, it may pass by delivery, and is by far one of the greatest incidents of ownership.

Howard vs. Easton, 7 Johns, 203.

And when it must be conceded for the sake of the argument of jurisdiction that this land is vested in the bankrupt, and he owned the rent notes, we can not escape the proposition that the bankrupt just prior to bankruptcy did transfer his property with intent to hinder, delay and defraud his creditors. The Judge of the lower court concedes this in his certificate of jurisdiction. (Record, page 62.)

In Harvey vs. West, 87 Ga., page 557, cited by opposing counsel, the seven years had not elapsed, and the son had no statutory title by virtue of that fact.

The Court will notice that appellee's counsel does not undertake to explain the definition of the word "transfer," in Sec. 1, Sub. Sec. 25 of the bankruptcy act.

The case of Harris vs. Bank, 216 U. S. 383, in no wise conflicts with the contention we make. In that case nothing was transferred by the bankrupt. Here, the possession of the land and $4,000.00 of rent notes were transferred by the bankrupt ONE MONTH PRIOR to bankruptcy. A transfer of possession, a transfer of notes, constitute transfers within the act. The question whether they were the **property of the bankrupt,** is not one of jurisdiction, but one going to the merits of the case. To reduce the proposition to its absurdity, if a lessor who is owner of land, transfers fraudulently

within four months of his bankruptcy, the lease, all that the transferee need do would be to claim that he deraigned title to the land from another source, and defeat the jurisdiction of the Federal Court to try the issue. Courts of Equity will never define what is and what is not fraud, for if they did, then the perpetrators of a fraud would be careful to see that their acts came without the definition. The law of jurisdiction, cannot depend on the devices resorted to to escape the trial of that issue in the Federal Court.

The learned counsel for the appellee on page 19 of his brief, comes near the question involved but just misses it. He supposes that the land in dispute was owned by E. J. Coleman, and hence with that supposition traces title to the rent notes and the possession in E. J. Coleman from one whom he claims was not an owner, namely the bankrupt.

But, if he had supposed, as the bill and proof shows, that M. C. Coleman was the owner of the land and of the notes, when he transferred them to E. J. Coleman, he would have to admit that E. J. Coleman did derive something of the bankrupts by virtue of the unlawful transfer, for he got possession and $4,000.00 of notes which he has collected. His argument in the language of the logicians, "begs the entire question" before this court.

Respectfully submitted,

FREDERICK T. SAUSSY,
A. S. BRADLEY,
Counsel for Appellant.

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Supreme Court of the United States

OCTOBER TERM, 1917

R. A. FLANDERS,
as trustee in Bankruptcy of
M. C. Coleman, Bankrupt,
Appellant,

vs.

ELISHA JORDAN COLEMAN,
Appelle.

No. 984

APPEAL FROM THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF GEORGIA

BRIEF OF THE APPELLEE

I.

Question for Review

The question presented in this case to the court, is: Whether or not the court below erred in holding that it was without jurisdiction to pass upon the question presented?

II.

Statement of Sections of the Bankrupt Law of 1898 Involved, and Decisions Thereon

Prior to the amendment of 1903 and 1910 the law governing suits brought by a trustee in bankruptcy was in these words:

> "Suits by trustees shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have

brought or prosecuted them, if the proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant."

Section 23, Bankrupt Act, 1898.

Bards vs. Hawarden Bank, 178 U. S. 524, this court says:

> "The Dictrict Court of the United States can, by the proposed defendant's consent, but not otherwise, entertain jurisdiction over suits brought by trustees in bankruptcy to set aside fraudulent transfers of money or property made by the bankrupt to third parties before the institution of the proceedings in bankruptcy."

Since the **Bards vs. Hawarden Bank** case has been decided Section 23 of the Bankrupt Law has been amended, and there is added the following:

> "Except suits be brought for recovery of property under sections 60, subdivision b, 67(e) and 70(e)."

So we examine those sections to see what they are:

Section 67(e) makes provision for the seeting aside of fraudulent conveyances and the recovery of property so conveyed, in the suit of a trustee.

Section 60(b) makes provision for the recovery of a preference given by the bankrupt within four months before the filing of petition in bankruptcy, or after the filing of said petition in bankruptcy and before the adjudication of the bankrupt. And the same covers judgment.

Section 70(e) is in these words:

> "The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover, the property so transferred, or its value, form the person to whom it was transeferred, unless he was a bona fide holder for value prior to the date of the adjuridation. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value. For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and

any State Court which would have jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction."

We wish to call attention to this fact, which is undisputed: The appellee does not claim title or ownership to said property by any transfer, conveyance or judgment from the bankrupt, either directly or indirectly, but claims title, right, interest and ownership in said property in fee simple by virtue of a deed to him years before the bankruptcy proceeding, and duty recorded. He says:

"If my son ever had title to said property he has it now."

He claims and contends that his son never had title or ownership to said property, but that he held the same for the appellee and with his consent, recognizing his title and ownership at all time, and claiming no title or ownership in said property at any time. Hence, the question in this case was title or no title, it being admitted by the appellant that the paper title was and always has been in the appellee. The appellant contends, however, that the title vested in the son by operation of the statute of this state, which will be hereinafter discussed.

"The law of bankruptcy is purely statutory, both in origin and development. The study of banruptcy then, is a matter of statutory construction."

Preface, Collier on Bankruptcy, page XXI. September 10, 1898.

Therefore, the appellee contends, and the court so held, that no question of title or ownership between the trustee in bankruptcy and an adverse claimant could be decided in the United States Court except the question falls within a legal construction of the three sections of the Bankrupt Act above cited, and, as the appellee does not claim title or ownership by any act of the bankrupt, but claims from an entirely different source, that the merits of the case could not be decided by the United States District Court, and could only be decided in a State Court, and when that qeustion appeared the court

was without jurisdiction, and it made no difference how the facts looked to the court, the court was confined to those cases specifically falling within the above sections of the Bankruptcy Act, and it was in those cases alone the amendments by Congress of 1903 and 1910 gave the United States Court concurrent jurisdiction with the State Courts.

> "It was argued for the appellant that the clause cannot apply to a case like the present one, because the bankrupt could not have brought suit to set aside a conveyance made by himself in fraud of his creditors. But the clause concerns the jurisdiction only, and not the merits of the case; the forum in which a case may be tried, and not the way in which it must be decided; the right to decide the case, and not the principles which must govern the decision."
>
> **Bards vs. Hawarden Bank, 178 U. S. 537.**

We quote from **Harris, Trustee, vs. First Nat. Bank of Mt. Pleasant, 216 U. S. 383, 54 Law Ed. 528.**, as follows:

> "A suit by the trustee in bankruptcy to recover property held by a third person, which, if the allegations of the petition are true, belonged to the bankrupt, and consequently passed to the trustee as the representative of the bankrupt's estate, is not made justiciable in the bankruptcy court by the provisions of the bankrupt act of July 1, 1898, (30 Stat. at L. 544, Chap. 541, U. S. Comp. Stat. 1901, page 3418), Sec. 70e, as amended by the act of February 5, 1903, (32 Stat. at L. 797, Chap. 487, U. S. Comp. Stat. Supp. 1909, p. 1308), conferring concurrent jurisdiction on courts of bankruptcy of suits by trustees to avoid any transfer of the bankrupt's property which his creditors might have avoided, and to recover such property, or its value, form persons who are not bona fide holders for value."

And in concluding this opinion the court uses this language:

> "That subdivision provides for avoiding transfers of the bankrupt's property, which his creditors might have avoided, and for recovery of such property, or its value, from persons who are not bona fide holders for

value. In this action, no such transfer is alleged; no attack is made upon a transfer by the bankrupt which would have been void as to creditors. The petition seeks to recover property held by the bank, if the allegations are true, which belonged to the bankrupt, and consequently passed to the trustee as the representative of the bankrupt's estate. The recover sought is of property held for the bankrupt estate, which the defendant wrongfully refused to surrender. The District Court was right in denying jurisdiction of the suit, and its judgment is affirmed."

So, in the present case, the appellee is in possession, refusing to surrender, and says that the title and ownership of this property is in him, that it always has been since the date of his purchase, years ago, and that title and ownership has never been in the bankrupt. If the title to this property is in the bankrupt and thereby passed to the trustee, and the appellee is wrongfully holding said property from the trustee, not claiming by or through the bankrupt in any way, then, according to the above decision United States Court is without jurisdiction, and this was so held by the District Court of the United States.

III.

Statement of the Case

We quote from the summary of the Honorable B. D. Evans, Judge of the District Court, whose decision is alleged as error. On page 53 of the printed record the Judge says:

"This is a suit in equity by the bankrupt's trustee against an adverse claimant to recover a tract of land, and certain notes given by the tenant for the rent of it. The jurisdiction of the court is invoked under sections 60b, 67e and 70e of the bankruptcy act as amended. The general scope of the bill is to the effect that many years prior to the bankruptcy, the father of the bankrupt, who is the defendant, made a parol gift of the land to the bankrupt, who entered into possession of the land, made valuable and permanent improvements thereon on the faith of the gift, and that under the laws of Georgia, the bankrupt became vested with a complete title thereto. About a year prior to the bank-

ruptcy the bankrupt mad a parol lease of the premises for five years, taking five notes payable to himself or bearer maturing annually for the rent of the land. Within four months of the filing of the petition to be adjudicated a bankrupt, the bankrupt, while insolvent, surrendered possession of and control over the land, and delivered four of the rent notes to the defendant (the other having been previously hypothecated to a bank) with intent, as alleged, to hinder, delay and defraud his creditors. The defendant denied that he made any gift of the land as alleged to his son, the bankrupt, and averred that the land belonged to him and never belonged to his son, and that his son's possession was permissive and by virtue of his consent that he mig'ht have the use of the land, and that the son's possession was his possession, and that the rent notes, although taken in the name of the son or bearer, were his notes. The defendant also pleaded to the jurisdiction of the court."

Page 54, printed record:

> "The trustee submitted evidence tending to show circumstances from which a parol gift of the land might be inferred, while that of the defendant was to the point that he had permitted the bankrupt to use the land, and that no gift of it had been made. The evidence further disclosed that the bankrupt made a parol lease of the land for five years, taking five notes, payable to himself or bearer, and that within four months before the filing of the petition he delivered four of the notes to the defendant having previously used one of them. The bankrupt and the defendant denied that parol gift of the land had been made, and insisted that the bankrupt's possession was by permission, and with the consent of the defendant."

Evidence of M. C. Coleman, sworn for the appellant as a witness, on page 33 of the printed record is as follows:

> "He did not at any time give me this piece of land. I did not at any time make any valuable improvements on it under the idea that he had given it to me. I have always acknowledged his right of property."

On page 34:

> "My father had the right and dominion over this piece of property now in dispute all the time since I have been there. I recognized my father's title, ownership and right to control this property as his own, all the time while I was there. From the time that I went there until the time I turned it over to him. Any time that he would have told me that he wanted it I would have given it up, because I knew it was his. It wasn't mine."

E. J. Coleman, appellee, sworn, says on page 39 of the printed brief:

> "This piece of land in dispute was never given to my son. He had the use of it. . . . As far as I know, all during his possession over there he had recognized my ownership, and title and dominion over that land always. I never saw an act from the boy in my life exercising any privileges like it was his'n. Never have seen any sign of it in my life—no talk, no acts that Iever heard him doing."

The petition bases titlte and ownership of the bankrupt by the possession from his father for more than seven years, presuming a gift, and also a gift with valuable improvements. The latter contention of gift with valuable improvement is not insisted upon, nor can it be, because of the following decisions of the Supreme Court of the State of Georgia: **Harvey vs. West, 87 Ga. Report, 533.** The court holding in this case, that though there was a parol gift with improvements by the son, that the property was not subject to an execution against the son, when the father filed a claim to the property. That there should be specific performance to make the title good.

The presumption of the appellant is based upon the presumption which arises where property is held by the son for seven years without the payment of rent. The answer denies these allegations, and sets up acts of dominion by the father, acknowledged by the son, and disclaimer of title by the son.

In reference to the notes on page 40 of the printed record, E. J. Coleman testifies as follows:

"When I got them (referring to the notes) I considered them mine, because they was given for stuff that belonged to me."

IV.

Argument

The trustee nowhere contended that there had been a transfer or conveyance of this land by the bankrupt to his father, but endeavored to show that the property in dispute was the bankrupt's property by virtue of a statute of the State of Georgia which presumes gift after years possession by a child from a parent. They undertake, in order to obtain jurisdiction in the District Court, to force the appellee to claim title to this property through the bankrupt, which he declines most positively to do, and, even, for the sake of argument, if the bankrupt had made a transfer voidable under the bankrupt law, and the defendant disclaimed all title under said transfer, being in possession before the bankruptcy, and set up title from an entirely different source, and said that title was never in the son, and therfore he could not convey or transfer the same, then the District Court would be without jurisdiction, and could not settle the matter as to the title contended for by the appellant, for the appellee held said land from an entirely different source independently of the bankrupt and held it for a long number of years before the bankruptcy. When that appears in this case the jurisdiction of the District Court of the United States vanishes.

We know of no law of the United States Court or of the Courts of Georgia which forces a party to claim titlte or ownership of property through any channel, but he sets up title and ownership in that way that he claims, as was done in this case, and this court, it seems to us, would not allow mere allegations of a transfer, conveyances, etc., made and contended for by the appellant to force the appellee to answer in that court when his right, title ownership and claim to such property does not come through the bankrupt in any way either directly or indirectly.

The section of the Code of Georgia relied upon by both the appellant and the appellee is section 4151, the first part of said section being relied upon by the appellant, and the last part being relied upon by the appellee:

Part relied on by appellant:

> "The exclusive possession by a child of lands belonging originally to the father, without the payment of rent, for the space of seven years, shall create conclusive presumption of a gift, and convey title to the child,"

Part relied on by the appellee:

> "unless there is evidence of a loan, or of a claim of dominion by the father acknowledged by the child, or of a disclaimer of title on the part of the child."

And the remainder or the latter portion of the section is the defense made by the appellee, and he claims title and ownership by written deed properly recorded, to the property in dispute which is admitted as the claim and contention of the appellee by the appellant.

> "Where the only defence, as shown by the evidence, to an action for land under claim of a parol gift by a father to his child, was that the child went into possession under agreement that the land was loaned to him, it was error to charge the jury that they could not find for the father unless they believed from the evidence that the child not only took possession as of a loan, but also acknowledged a claim of dominion by the father, or disclaimed title."
>
> **Hardman vs. Nowell, 84th Ga. Report, 46.**

In discussing this case, on page 48, the Justice uses this language:

> "The father can insist on either or all of these defenses."

Just here, if the court will pardon a little diversion, we wish to say that an examination of all the Georgia authorities cited by the appellant will show that the cases were decided upon the issue of fact, the jury finding in some of the cases

that the seven years possession had been rebutted, and in others that it has not been rebutted, and we think the very citation of these Georgia authorities was for the purpose of convincing the court that this seven years possession made a title, and that evidence of the appellee, contending that his son held same by permission and loan, cearly demonstrates the fact that the District Court is without jurisdiction to try the issues of the case. There is no law, and no way to construe the bankrupt law so as to give to the court the right to pass upon any questions between an adverse claimant as to his title and ownership of property when it appears his title or ownership does not come through the bankrupt. It shows it to be not only adverse to the trustee, but adverse to the bankrupt, and title and ownership coming through an entirely different source than any act of the bankrupt, or conveyance or transfer from him.

For the sake of argument, just here, suppose the bankrupt thought that it was necessary in order to make or carry out the agreement between his father and himself, towit: That he was permitted to go into possession of this property and use it as a loan pay no rent therefor, and when he wanted to return it to the father, it was necessary for him to make a transfer or conveyance thereof, back to his father, and that he did so, (which he did not in this case) and then the father, the appellee, should say that he claimed no title, right or interest in this property under and by virtue of this conveyance or transfer, for the reason that the bankrupt never had any title to convey, he never having owned this property, that it was the property of the father at all time by virtue of his purchase and written deed duly recorded years before bankruptcy intervened, could it be said that under the construction of the bankrupt law, meaning sections 60b-67e-70e, of Sec. 23, that the District Court would possess jurisdiction to try independently the adverse title set up by the father as against the son?

We next come to the question where the appellant contends this possession of this land was given to the appellee

within four months. It can not be doubted that if this land was owned by the appellee and never owned by the bankrupt, he would have a right to take possession of this property at any time, it being his own property.

> "Whatever may be the true view of the law where a debtor conveys his own property to a creditor, we are satisfied that where one conveys property not his own, which he wrongfully holds, to the rightful owner, the law does not require the latter to yield his rights and decline taking it because the person who has withheld it wrongfully, may, in returning it, intend thereby to keep his own creditors from getting it. One who takes merely what is his own is not punished for considerations which may operate upon the mind of the party who gives it up."
>
> **Dodd & Co. vs. Bond, 88 Ga. Report, 360.**

Two things are necessary to create jurisdiction, whether original or appellate in the inferior courts of the United States.

> The Constitution must have given to the Courts the capacity to take, and the Act of Congress to Supply.
>
> **Nashville vs. Cooper, 6th Wallace, 347.**
>
> **United States vs. Hudson, 7th Cranch 32.**
>
> **Bank of United States vs. Deveaus, 5th Cranch 61.**
>
> **Kentucky vs. Powers, 201 U. S. 1.**

So, upon an examination of the question of jurisdiction, we find the juridiction of the district court is limited to transfers, conveyances, etc., and does not extend to the settlement of title to property between trustees and adverse claimants, when the title is not derived from the bankrupt directly or indirectly, and the adverse claimant does not claim title or possession through any act of the bankrupt directly or indirectly, legal or illegal.

Just here we take the opportunity to call attention to a part of the brief of the appellant which discusses the different trusts that may be set up in the State of eGorgia, and he says

that there are, many constructions of the law that would defeat jurisdiction in this court, and open the door to fraud, and force the trustee to litigate in the county or residence of the party setting up these trusts. We certainly do not think it necessary to discuss that proposition, because the District Court could not, and this Court of review, will not, deal with the imperfections, if there are any, with the jury system in Georgia, and of the trust allowed under its statutes to be set up. In any case, even if this court thought this law was wrong, the court would not take jurisdiction of one of these matters simply to slap the State of Georgia in the face, because her law is not in accord with the view of this court, and her statutes might open the door to fraud, and we know of no such jurisdictional ground as that in the bankrupt law or any statute of the United States in setting out the jurisdiction of its courts, and we do know that a party bringing suit in the United States court is compelled to set out the jurisdictional facts. And if this argument of the appellant could be considered at all, and this court could hold jurisdiction because of these laws of the State of Georgia, then the decisions of this court would make a good ground of jurisdiction in the United States Court, which are the allegations against the system of trusts and statutes, and trial by jury in Georgia.

Lowell vs. Newman, 227 U. S. 412, 57th Law Ed. 577.

In discussing sections 60b, 67e, 70e, the Supreme Court in the above decisions uses this language:

> "Trustees must bring cases clearly within the terms of these sections to sustain jurisdiction of the court, the mere fact that the trustee claims title to the property was in the bankrupt before bankruptcy does not give the court jurisdiction."

Bailey vs. Baker Ice Mfg. Co., 239 U. S. 274.

In discussing the effect of preference this court uses this language:

> "That the transfer referred to in this section is where the bankrupt surrendred his property for the benefit of a particular creditor."

Remember, that in this case there was no secret equity or trust set up. The appellant does not contend that the appellee is claiming this property by any secret trust, equity or right, that has been withheld and is now for the first time presented in order to hinder, delay or defraud creditors, and all the cases cited upon that subject in the brief of the appellant are where there was some secret right or equity concealed and unknown to creditors, which a party, was trying to assert to the detriment of creditors and to hinder, delay and defraud them in the collection of their debts. Still, the appellant cites on page 35 of his brief a section of the Code of the State of Georgia, and decisions therein where secret trust arises. A careful reading of these decisions will show that sometime the courts held in fevor secret trusts and will enforce them, and sometime they were of such a character that they will not uphold the trust, and, therefore, they make a question of right of creditor, and title to the property. But in this case, as above stated, no secret equity is set up, no purchase of property with money of the appellee, E. J. Coleman, and titlte taken in the name of M. C. Coleman, nor is there any claim of reservation of interest in the bankrupt at the time of the bankrutcy or after the bankrutcy, or before, but the claim in this case, as set out by the appellant, and which he offers proof to establish is that title and ownership of this property was at one time openly and notoriously, on account of the law of Georgia, in E. J. Coleman, the appellant, the whole world know of the fact that title was in him, and if title had not been in him, then he could not have given this property to his son, as contended by the appellant, nor could he have loaned it as contended by the appellee.

Permissive possession can never ripen into title so long as the possessor under permission does not set up an adverse claim with knowledge to the party from whom his permissive possession was acquired. Possession in Georgia is not evidence of title, but is simply notice to bona fide purchaser or the maker of a contract lien from another of all the right, title or interest that may be in the party in possession. To illustrate:

If I should be in possession of a piece of land and Mr. Saussey should sell the land to a member of this court, my possession would be notice to the member of this court of whatever right or title I might have in the land.

Garbutt & Donovan vs. Mayo, 128 Ga. Report, 269.

So, as title passes by writing, duly recorded, is notice to the world of the ownership of the property in the party holding the written title, so a creditor or a bona fide purchaser from M. C. Coleman, the bankrupt, having paid the full purchase price and went into possession could subject this property to their lien, or hold it in case of a purchaser against E. J. Coleman who held the title and thereby had the ownership of the property, said creditors and said purchaser being put on notice by virtue of the law of Georgia relative to deeds. So, how can a creditor say he has been mislead or deceived because a man in possession represented to him that the title to the property was in him? It would be his duty to see if this was true by an examination of the record of the county in which the land lay, and if he relied on the statement of the party it could not effect any party holding the property who was not present and did not in any way mislead by his actions the creditor or purchaser.

So inthis case, if the trustee claims title to this property and says that the creditors whom he represents should subject this property because the son held it for more than seven years without the payment of rent, then, as was found, admit that they knew that in a case of this kind this presumption could be overcome by showing that the father had loaned the son the property in which he found him in possession, and then would be put on notice to make such inquiry of the father as would satisfy him that the son's statement was true. He could not pretend knowledge of one portion of Section 4151 of the Code, hereinabove set out, when it was to his benefit to do so, and deny knowledge of the latter portion of the section, which, if true would defeat the presumption raised in the first part of the section. If he insists on the one he must insist on the

other, and if a man deals with a child in possession of property, he must deal with all the knowledge of the law on the statute books.

John E. Comron vs. Cauchois, 39th A. Bank, Rep. 730.

The trustee contended that the bankrupt had made a deed to his wife (in the above stated case) to hinder, delay and defraud his creditors, and that therefore, when the evidence showed the conveyance was made within four months before the bankruptcy, and the court allowed in evidence a letter written by the bankrupt to a friend for the purpose of borrowing money, in which letter he stated that the property in dispute was his, and that at that time there was a deed on record conveying this property to him and the wife's interest was discussed, the District Court held that the evidence was not sufficient to show a deed made to hinder, delay or defraud creditors, the court found in favor of the trustee because of the statement in the letter that the deed or property belonged to him. The Circuit Court of Appeal, commenting on that case, reversed the District Court on the last proposition, and used this language:

> "But the District Judge held that because Mrs. Cauchois put the title in her husband's name and he was shown to have included the premises in a list of his assets in a letter dated Jan. 31, 1911, to a friend from whom he got a loan, she was estopped from claiming the premises to be hers as against his creditors. But he found Cauchois to be trustee for his wife, in which finding we concur. No representation by him as to his ownership could prejudice her title if she were not a part to it."

In the case the written title was in the bankrupt, recorded, examined by creditors, and therefore binding, but in this case title was not in the bankrupt at any time, being at all time in E. J. Coleman, appellee, admitted to be so by the appellant, and therefore, how could a statement of the bankrupt effect this title of the appellee?

7th Corpus Juris, Section 266b.

"In order to establish a voidable preference it is necessary that the debtor shall have transferred to a creditor some portion of **his own property,** which his other creditors had a right to subject to the payment of their claims."

"The taking of a claimants own property in possession of the bankrupt at the date of his adjudication does not constitute a preference."

Wright vs. Dana Hardware Co., 205, Fed. 355.

The same doctrine in the above citations has been declared to be the true rule by this court. See,

Newport National Bank vs. Nat. Herkimar Co. Bank, 255 U. S. 178-184.

Now we next discuss the notes in this case, and lay down the proposition that the rent for all real estate goes to the party who ownes the real estate, and that the party who does not own it can not receive any benefit or rent therefrom, and we ask the question, what kind of an estate would the bankrupt acquire in this property if the contentions of the appellee, his father is correct, that he made a loan of this land to his son? What is a loa?

"Loans are of two kinds—for sonsumption or for use."

Code of Georgia, Section 3516.

Necessarily a loan of real estate is for use.

"A loan for use is the gratuitous grant of an article to another for use, to be returned in specie, and may be either for a certain time or indefinitely, and at the will of the grantor."

Code of Georgia, Section 3517.

"The borrower acquires no title in the thing loaned, but only the right to possess and use it."

Code of Georgia, Section 3520.

"A lender may not revoke a loan for a definite time so long as the borrower meets fully his engagements. A loan at will, or indefinitely, may be revoked at any time."

Code of Georgia, Section 3522.

So a loan at will or indefinitely may be revoked at any time. So real estate held by loan creates a tenancy at will. Bear in mind there was no writing relative to this real estate, but that everything existing between the bankrupt and his father was in parol, then it is necessary to examine the statute of fraud and find that no estate in realty can be created for a greater period than twelve months.

> "Any agreement (except contracts with overseers) that is not to be performed within one year from the making thereof, must be in writing."
>
> Code of Georgia, Section 3222, Sub-Division 5.

The statute of fraud, prior to the section above cited was:

> "No parol lease of realty could be created for more than three years."

In our state the rule has been laid down as follows:

> "A parol lease of land for more than three years is void by the statutes of fraud, and has the force and effect of an estate at will, which for some purpose has been by judicial construction converted int oan estate from year to year."

So, a loan of real estate for an indefinite period at the will of the lendor and of an indeterminate duration, which were the ancient terms, and denominated tenancies at will are now considered as from year to year.

> "A lease-hold interest for an indefinite period and uncertain term ,is an estate at will."
>
> 24th Cyc. 1038.
>
> Contracts creating the relation of landlord and tenant and for any time not exceeding one year, may be in parol, and if made for a greater time shall have the effect of a tenancy at will."
>
> Code of Georgia, Section 3693.

So, under the above authorities, if the land was loaned to M. C. Coleman, the bankrupt, as contended by his father, the appellee, his tenancy would be from year to year. Therefore, when he undertook to rent this land in parol to Dan

Davis for a period of five years, taking as evidence therefore rent notes of Dan Davis, he exceeded all right and authority held by him under this loan from his father, and Dan Davis would atone to M. C. Coleman, the bankrupt, as long as M. C. Coleman's tenancy existed and no longer, but when M. C. Coleman terminated this loan by surrendering possession of this property to its owner, the person who loaned it to him, E. J. Coleman, then the right of Dan Davis ceased and no rent could be collected from him, and no right to occupy the property was in him, and if M. C. Coleman had not sent these notes to his father, the owner of this land, but had placed them in the hands of his trustee, upon the decision of the question as to who held title to the real estate, the rent of which the notes represented, belonged, who owned the property, these notes could not be collected by the trustee. And this of itself shows that there is no claim of a transfer or conveyance by M. C. Coleman to E. J. Coleman, but the claim of E. J. Coleman rests upon his deed and the fact that he never gave the property to his son, but only loaned it to him, and therefore, the only question in this case is title or no title. And the District Court had no jurisdiction over this matter. If E. J. Coleman owned the real estate he could put Dan Davis off, he need not recognize him as a tenant, and Dan Davis would have no redress except upon the bankrupt, M. C. Coleman, for damages, he never having traded with E. J. Coleman, the owner of the land, and therefore the land belonging to E. J. Coleman, the notes representing the rent of the land, belonged to E. J. Coleman, and E. J. Coleman had a right to ratify this rental made by his son, though made without authority, and upon a ratification he would have a right to collect these notes, all of which revolves around the one question, **in whom rests the legal title t othis land?**

The attorneys for the appellants argues that this possession, by the delivery of notes, was a transfer. But this can not be the law, because if the land in dispute was owned by E. J. Coleman, then these notes, if he was willing to accept Dan Davis as a tenant, became his property, because they represented an agreement to pay for the use of property belong-

ing to E. J. Coleman, and thereby he became entitled to these notes, as he would be entitled to notes representing the rents of his property. In an effort to make the above statement clear we reason:

Suppose M. C. Coleman had delivered this land to his father, the owner, and had delivered the notets of Davis to his trustee as his property, is it not true that under the facts in this case, if the property was decided to be E. J. Coleman's propery that the trustee could not collect the notes so delivered as the property of M. C. Coleman? Do not the notes go with the land, and no delivery of the notes could be called a transfer, because it could not be enforced. The only way E. J. Coleman could collect the notes of Dan Davis is because he ratified the act of his tenant at will, and took the face of these notes as the rental of this land. We do not believe that he could foreclose under the law one of these notes. Davis' defense would be that this note is void and you can only collect a reasonable rent by virtue of my occupancy of the land after you went back into possession, unless Davis was willing to ratify and take E. J. Coleman as his landlord and pay the notes as if originally signed to E. J. Coleman. Ratification and substitution would make them collectible by E. J. Coleman, thats all.

While all Federal Judiciary has its origin in the Constitution, it is a well settled fact that the courts of the United States, inferior o the Supreme Court of the United States, possess no jurisdiction other than that expressly conferred upon them by the acts of Congress. Being statutory courts, they can possess no jurisdiction except such as the statutes confer.

Sewing Machine Companies, 18 Fallace, 553-577; 21 Law. Ed. 914.

Holmes vs. Golsmith, 147 U. S. 150, 37 Law. E. 118.

Courts exercising special statutory jurisdiction can not under any special analogy to proceedings in chancery exercise any power beyond that which the act or acts of congress have given.

United States vs. Knight, 1 Black, 488-89, 17 Law Ed. 80.

East Tennessee R. R. vs. So. Tel. Co., 112 U S. 306, 28 Law. Ed. 746.

The District Court of the United States gets its jurisdiction from the Acts of Congress passed within the power of the constitution. They are created by Acts of Congress, and it is necessary in every attempt to define their power to look to that source as a means of accomplishing that end.

18 Wallace, 553 Supra.

So, this suit was predicated under certain sections of the Bankrupt Act giving the District Court jurisdiction therein specified. Just here we might refer to the fact that in reference to the rent on the fifty acres of land, nothing in regard to it was set out in the pleading, but it incidently dropped out in the evidence, hence the decree of the court in reference thereto. The amount of this rent was agreed upon and paid.

Appellant on page 23 of his brief asks:

> "—If the Court deemed the transfer of the rent notes, as to this 50-acre tract void, and deemed that the Court had jurisdiction to require E. J. Coleman to pay the pro rata rents of the 50-acre tract, why did not jurisdiction of the Court exist to set aside the transfer of the rents of the locus in quo, as both rents were transferred by the very act, uno ictu, in delivering the rent notes to E. J. Coleman."

We can not conceive that counsel mean that where a suit in equity is filed and an answer had, and that during the trial it appears that there is a very small amount involved not in dispute between the parties, that the court, being limited by the Act of Congress, had no jurisdiction because of incidental occurances brought out in the testimony, of a small amount due, admitted by the defendant. In addition to that, we call the courts' atteitnon to the opinion of the Judge, and that part of his opinion, commencing on page 55 of the printed record, which is as follows:

"With respect to the rent notes, this feature, not disclosed by the pleadings, appears in the evidence. The notes were given for a body of land, which included a small tract fo 50 acres, which belonged to the bankrupt. This 50 acre tract went into the possession of the trustee, and there is no contest over its ownership. The defendant makes no claim to so much of the rent notes as equitably represents the rents of the 50 acre tract, and offers to account for same. Under the special facts of the case, I think that upon the defendant's accounting for the rent of the 50 acre tract, the action should be dismissed without prejudice to the right of the trustee to institute a suit in the State Court to recover the land and mesne profits. According, if the trustee and the defendant can agree on the amount, upon the payment of the same, the action will be dismissed in this court without prejudice. If the payment be not made, then so much of the action as relates to the recovery of the notes be retained, so as to permit a recovery of the amount of rent of the 50 acre tract. Let an order be prepared to this effect."

Now the parties agreed, and the defendant did not object to paying the amount due for the rent of the 50 acre tract of land included in one of the rent notes; the trustee did take possession of the 50 acre tract, selling it to E. J. Coleman, the appellee, so when it appered the there was rent due of this land, E. J. Coleman expressed the wish that he be allowed to pay this amount of money and he had offered to pay it without litigation. The opinion of the court is not the subject of review, and we can not believe that counsel is really in earnest, because this amount was settled by agreement before the court, and the final decree was rendered without prejudice to either party. There is no law that we can find, that makes the opinion of the Judge the subject-matter of review. The final decree of the court is the subject matter of review, and if the appellant had any objection to the final decree of the court, because the court allowed this amount to be settled, he should have made that objection to the court. In other words, the Court could not have passed on the land, and would not have done so, and did not do so, claimed by the trustee, but the court

simply said he would retain the case to settle that particular amount, and let the final decree express what was done in the matter.

In order to get the settlement of the rent of the 50 acre tract counsel for the appellant received the amount agreed upon by the appellee that he would pay, and that matter went out of the case with the payment of this amount, and the court bases its final decree upon the question of jurisdiction, as the case made by the pleading, and as it appears from the evidence.

Johnson vs. Griffin, 80th Georgia Report, 555.

We call attention to the above case, and note at some length this decision, because we think it settles beyond a doubt the question raised in this case.

There are two kinds of gift under the law of Georgia, that is, gift with improvements, which require the filing of an equitable petition to decree title in the affiant, which possession is less than seven years, and the second is conclusive presumption of the gift which arises from seven years possession and payment of rent. The court in the above case says,

> "The court, as now constituted, think that under the language of this section, the law does not define the character of the gift, whether written or oral. It conclusively presumes a gift, a parol gift, or one in writing; the gift though in parol, if acted upon and asserted for seven years without the payment of rent, and without the claim of dominion by the father over the property—not over the paper title, but over the property, is effective, and the son's acknowledgement that the paper title is in his father will not prevent the statute from taking hold and competing the gift. The statute says that this exclusive possession without payment of rent for the space of seven years, shall create conclusive presumption of a gift and convey title to the child; it does not require any deed to convey it. The possession continued so long, under such circumstances, will convey title to the child. Until that term has elapsed, the gift is incomplete; it is re-

vocable, if it is in parol, but after the lapse of seven years, the title passes, under this statute, whether there has been a deed executed or not; and it is not at all inconsistent that there should be a parol gift perfected under the statute, and yet the father have the paper title. The effect would be simply that the paper title is defeated by the statutory title; that is all. And it does not follow, therefore, that the recogniion by Benj. F. Johnson of a paper itle in his father, either while the seven years were running or after they expired, would be anything derogatory to his claim by virtue of the gift. If he meant, in making this acknowledgement, that the gift was made, but it was in parol, and that he was standing upon the gift, it does not matter where the paper title was or where he acknowledged it was. It was perfectly consistent with the gift by parol for the paper title to have been retained by the father.

"These being our views, we think the court was at least justifiable in granting this new trial—more especially as, after looking into the charge, which is in the record in full, it does not appear that this view was presented to the jury. It ought to be presented upon a second trial of this case, and the jury ought to be called upon to determine, not merely whether there has been a recognition of paper title in the father, but whether that recognition meant that there was no gift. If it meant that—if that is the construction to be put upon it, that it was the faher's land really as well as on paper, there ought to be no recovery in this action; but if the meaning of the son's admission was that "it is my land by gift, and by what I have done under that gift, but my father has the paper title, and I would like to get that, so as to afford evidence that it is my land without going to the trouble to prove it every time my title is asserted"—if the admission meant this, they are consistent with his right under the gift, and with the effect of this statute, as we now construe it, in such a case."

The above case clearly demonstrates that in a case between father and son, where the son claims title by gift, and the father denies, that there is an issue of gift or no gift, title or no title, to be left for decision.

"Title which is good as against a bankrupt, and his creditors at the time the trustee's title accrued, does not pass to the trustee."

Thomas vs. Thaggert, 209 U. S. 385.

Zillerman vs. First National Bank, 216 U. S. 134.

Now the question in the case at bar is, did the son ever have title to this property that he or his creditors could recover against E. J. Coleman. That is the question of this case. There is no claim by E. J. Coleman, appellee, by any act of the bankrupt whatsoever. The real claim is, that the son obtained the title by an act of the appellee, E. J. Coleman, in allowing him to remain in possession of this land for more than seven years. And, if that were not denied by E. J. Coleman, the title to the property, and the ownership thereof, would be in the son, but E. J. Coleman, appellee, say, that the title or ownership in this property has never vested or been in the bankrupt, that it has alwys been his, there being no gift and no intention to give, all of which has been hereinabove discussed.

Now, in the case at bar, the title to this land and the ownership thereof, never could vest in the son, the bankrupt, M. C. Coleman, as long as he admitted that the title and ownership of this property was in his father; acknowledged his ownership, his dominion. The court in the cases above cited reversed the judgment of the court below, and in doing so uses this language; speaking of the statement of the son, they say:

"If it means that it was the father's land really as well as on paper, there ought to be no recovery in this case."

V.

Conclusion

Did M. C. Coleman, the bankrupt, ever own this property, is the question, and it can only be answered by deciding from the evidence whether or not the defendant, the appellee, E. J.Coleman, who contended that the possession of the son was as a loan and by permission, and that the son recognized his ownership and dominion all the time. A settlement of that question favorable to the son is the only way to say title ever vested in the son. If it did, he had the title years before the bankruptcy proceedings.

Is the title and ownership of this land in E. J. Coleman under his plea and the facts in this case? If it is, it has been in him since sometime before 1902. This question can not be answered without looking into the pleading, and the evidence in the case and deciding whether the bankrupt went into possession as a loan and whether the appellee exercised dominion over the same, acknowledged by the son, or whether or not the son disclaimed title, either one or all three. If the question should be decided in favor of the appellee, that it was a loan, he exercising dominion acknowledged by the son, or that the son disclaimed title, either one or all three, then the title and ownership of this property was always in the appellee as far as the bankrupt is concerned, and never has the bankrupt had any title or ownership thereof. Now, these questions can only be settled without the consent of the adverse claimant in a court in which the bankrupt could have brought suit had the bankruptcy not intervened.

Bankrupt Act, Section 23.

So the District Judge was right. He did not undertake to pass upon the merits of the case, or to settle the difference between the adverse claimant and the bankrupt represented by his trustee, because he had no jurisdiction to do so. Therefore, we contend that the judgment of the District Court should be affirmed, and if the trustee is in earnest relative to

the title and ownership of this property, and is not satisfied since he has heard the facts, then he is not without remedy, but should come to the form which the law says has jurisdiction t opass upon the issues, the court in which the bankrupt could have brought suit, being the County of Emanuel, State of Georgia, the residence of the appellee, E. J. Coleman, and in the County where the land is situated.

Respectfully submitted,

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FLANDERS, AS TRUSTEE OF COLEMAN, *v.* COLEMAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

No. 419. Argued April 14, 15, 1919.—Decided June 2, 1919.

In a suit by a trustee in bankruptcy to set aside preferences and transfers, the jurisdiction of the District Court depends upon the allegations of the bill and not on the proof in support of them; and, where the bill makes a substantial case within the jurisdiction, the court must determine the merits. P. 227.

Under the Bankruptcy Act, as amended in 1903 and 1910, the District Court has jurisdiction of a suit brought by the trustee against a third party without his consent, to set aside preferences, under § 60b, and transfers under §§ 67e and 70e. *Id.*

Whether an alleged surrender of real property and delivery of rent notes amounted to conveyances under the state law, *held* matters appertaining to the merits and not to be considered on direct appeal under § 238 of the Judicial Code. P. 229.

249 Fed. Rep. 757, reversed.

THE case is stated in the opinion.

Mr. Frederick T. Saussy, with whom *Mr. A. S. Bradley* was on the briefs, for appellant.

Mr. F. H. Saffold for appellee.

MR. JUSTICE DAY delivered the opinion of the court.

This case is here (Judicial Code, § 238) solely upon a question of the jurisdiction of the District Court of the United States for the Southern District of Georgia to entertain the suit brought by R. A. Flanders, as Trustee in Bankruptcy of M. C. Coleman, against E. J. Coleman.

Omitting unnecessary parts, the bills avers: That the jurisdiction of the court is invoked under §§ 60b, 67e and 70e of the Bankruptcy Act, as amended. That in 1902 the said E. J. Coleman, the father of M. C. Coleman, owned a tract of land containing 377 acres in the State of Georgia, and placed his son, M. C. Coleman, the bankrupt, in possession thereof, expressing the intention to give the land to his son. M. C. Coleman cleared the land, moved on the same and lived thereon for a period of at least twelve years, and placed valuable improvements thereon. That M. C. Coleman rented as landlord said 377 acres to Dan Davis, rent notes of $1,000 each for the same being taken in the name of M. C. Coleman, payable on October 1st, 1914, 1915, 1916, 1917, 1918, respectively. That M. C. Coleman collected the note maturing October 1, 1914, and that he became insolvent on December 1, 1914, and ever since that date, up to the time petition was filed, was insolvent within the meaning and intent of the Bankruptcy Act. That while so insolvent, in January or February, 1915, M. C. Coleman turned over to E. J. Coleman four of said rent notes of the value of $4,000, with the intent to hinder, delay, and defraud his creditors. That if the conveyance of the said rent notes was not made with the purpose to hinder, delay and defraud creditors, the transfer had the effect to create a preference in favor of E. J. Coleman, in that when the same was made M. C. Coleman was insolvent, and the collection thereof would enable E. J. Coleman to obtain a greater percentage of any indebtedness claimed to be owing to him by M. C. Coleman, than any other of such creditors of M. C. Coleman, of the same class. That said transfer was within four months from the filing of the petition in bankruptcy, the bankrupt was insolvent, and the transfer operated as a preference, and E. J. Coleman at the time of receiving the same had reasonable cause to believe that the same would effect a preference. That M. C. Coleman, up to December 1,

1914, had a good title to the said 377 acres of land, although it does not appear that a deed had ever been delivered from E. J. Coleman to M. C. Coleman. That E. J. Coleman placed M. C. Coleman in possession of the said land with the intention to give it to him, and the latter held possession of it as his own, and made improvements on it of great value, and dealt with the land as his own for the purpose of obtaining credit, and from said long possession the title to the land became vested in M. C. Coleman. That at the time of the transfer of the rent notes to E. J. Coleman the legal title or right to the land was completely vested in M. C. Coleman as if he had obtained a deed from E. J. Coleman. The complaint adds a description of the improvements, a house, etc., adding, it is averred, $6,400 to the value of the premises. That M. C. Coleman, by agreeing with E. J. Coleman to relinquish his rights and title to the real estate and improvements, in the year 1915, did so with intent to hinder, delay and defraud his creditors. The petition prays that the transfer of the four rent notes be declared void as being made with the intent to hinder, delay and defraud the creditors of M. C. Coleman. That the transfer of the notes be declared to be a preference, should the court hold or find that there is any indebtedness owing to E. J. Coleman by M. C. Coleman. That the notes collected by E. J. Coleman be accounted for. That any of said notes which may not have been collected, be decreed to be surrendered to petitioner. That the 377 acres of land be declared to be the property of the petitioner as trustee in bankruptcy for the purpose of applying the same to the credit of the creditors of the bankrupt. That in the event that the court should hold that the complainant should not have and receive the relief prayed for because of any defect in complainant's claim of title, that he be declared as such trustee to have an equitable lien or charge on the said land, at least to the extent of the value of the improvements. That the said

E. J. Coleman be required to specifically perform his promise and agreement to convey title to the land to M. C. Coleman, and the title be made in the petitioner's name as trustee for the benefit of the creditors of the bankrupt. Afterwards the complainant filed an amendment to the bill in which it was alleged: That within the period of four months immediately preceding the filing of the bankruptcy proceedings by M. C. Coleman, to wit: in January, 1915, while insolvent, and with intent to hinder, delay and defraud his creditors, the said M. C. Coleman, who then held the title to the above described real estate, fraudulently disclaimed such title, and surrendered possession thereof to E. J. Coleman, and thereby fraudulently transferred his rights, title, interests and equity in said real estate to E. J. Coleman, and transferred said rent notes with the purpose and intent to make the tenant the tenant of the respondent, and as such he has attorned.

An answer was filed taking issue upon the allegations of the bill as to fraudulent transfers and conveyance, and making other allegations unnecessary to set out in detail. The cause was referred to a master, who took the evidence, and found that the District Court had jurisdiction, and that there was a fraudulent transfer, and advised a judgment in favor of the trustee. After considering the report of the master, the District Court made a final decree, finding: That, assuming, for the purpose of the consideration of the question of jurisdiction, the testimony submitted by the complainant to be true, the court was without jurisdiction to make a decision on the merits of the controversy. And it was ordered and directed that the bill of complaint be dismissed without prejudice of the petitioner's right to maintain his action in a state court. The District Court also made a certificate stating: That the decree of dismissal was based solely upon the ground that the court was of opinion that it had no jurisdiction to

grant any relief to the complainant, that, in reaching this determination, the court had considered the evidence of the complainant, assuming it to be true for that purpose, only, and that it did not show such a transfer within the meaning of the laws of Congress relating to bankruptcy as would give the court jurisdiction of the proceedings.

Whether the District Court has jurisdiction to grant any relief must be determined upon a consideration of the allegations of the bill and the amendment thereto. If there be enough of substance in them to require the court to hear and determine the cause, then jurisdiction should have been entertained. Looking to the allegations of the bill and the amendment, as we have stated them, it appears that the trustee invoked the aid of § 60b of the Bankruptcy Act, 32 Stat. 799, relating to preferential transfers made within four months before the filing of the petition in bankruptcy, also § 67e, 30 Stat. 564, making fraudulent transfers within four months null and void, except as to persons acting in good faith, or for a present, fair consideration, and of § 70e of the act, 30 Stat. 566, providing that the trustee may avoid any transfer of the bankrupt's property that any creditor might have avoided, and may recover the property, so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder prior to the adjudication.

Since the amendments to the Bankruptcy Act of 1903 and 1910 (32 Stat. 797; 36 Stat. 838) the District Courts of the United States are given concurrent jurisdiction with the state courts to set aside preferences under § 60b of the act, and fraudulent transfers within four months prior to the filing of the petition, under § 67e of the act, and transfers under § 70e making void any transfer by the bankrupt of his property which any creditor might have avoided, and giving the trustee the right to recover the same. See *Stellwagen* v. *Clum*, 245 U. S. 605, 614; *Collett* v. *Adams*, 249 U. S. 545.

The opinion of the District Court, as set forth in the record, shows that its conclusion that there was no jurisdiction was based upon a consideration of the evidence, from which it was found that no preference was shown under § 60b, nor any fraudulent transfer under §§ 67e or 70e. To justify its conclusion that it was without jurisdiction the district judge cites certain decisions of this court: *Bardes* v. *Hawarden Bank*, 178 U. S. 524, in which this court held that under § 23 of the Bankruptcy Act the District Court could by the consent of the defendant, and not otherwise, entertain suits by the trustee against third persons to recover property conveyed by the bankrupt before the institution of the bankruptcy proceedings. It is sufficient to say of that case that it was decided under the terms of the act before the amendments of 1903 and 1910, respectively, to which we have referred, and which give concurrent jurisdiction to the state and federal courts. The District Court also cited *Harris* v. *First National Bank of Mt. Pleasant*, 216 U. S. 382, wherein no transfer of the bankrupt's property was alleged in the petition. The suit was one by the trustee to recover securities of the bankrupt, alleged to be held by the bank for the security of an overdraft which, it was averred, had been paid; and also to recover certain notes alleged to have been paid by the bankrupt.

The opinion of the District Court shows that it really considered the merits of the case in reaching the conclusion that it was without jurisdiction. As this court has not infrequently said, jurisdiction must be determined not upon the conclusion on the merits of the action, but upon consideration of the grounds upon which federal jurisdiction is invoked.

Much of the brief of counsel is taken up with a discussion as to whether the alleged transfers amount to a conveyance under the Georgia statutes and decisions. This discussion is pertinent to the merits, our sole inquiry

223. Syllabus.

concerns the jurisdiction of the court. We are of opinion that there was enough alleged to properly invoke jurisdiction, and that the charges of fraudulent transfers of the rent notes, and of interests in real estate, were sufficiently made to bring the action within the jurisdiction of the District Court under the provisions of the Bankruptcy Act. In this view the judgment of the District Court dismissing the action for want of jurisdiction is

Reversed.